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HONG KONG AFTER 1997

Y 4. IN 8/16:H 75/2

Hong Kong After 1997, 104-1 Hearing...

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SUBCOMMITTEE ON
ASIA AND THE PACIFIC
OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

JULY 27, 1995

Printed for the use of the Committee on International Relations



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HONG KONG AFTER 1997

THURSDAY, JULY 27, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON ASIA AND THE PACIFIC,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m. in room 2200, Rayburn House Office Building, the Honorable Doug Bereuter, (chairman of the subcommittee), presiding.

Mr. BEREUTER. The subcommittee will come to order. We are going to proceed, I think, with my statement. We are going to try to work in the maximum amount of things we can even without our prime witness here for the first panel. We may have to take a recess here.

I am Congressman Doug Bereuter. This is the Asia Pacific Subcommittee, and there is a mandatory Republican conference going on right now which I am skipping, and our ranking member, a distinguished gentleman from California, Mr. Berman, has four hearings at 10 a.m. today in which he is supposed to be involved, one of which where he is testifying on an issue that is crucial. He will be here as soon as possible, but I am going to proceed with an opening statement and perhaps we will have to recess.

Because of the floor schedule today I would like to make sure we have a chance to hear from our witnesses, and if it is a matter of record for our colleagues, that is unfortunate, but at least we do not want to crowd the opportunity for witnesses to have a full opportunity to address the subcommittee and to establish a record.

In exactly 705 days, I am told, nearly a century of British rule will end and Hong Kong will officially become a special administrative region of China. Although the basic rules for that transition have been prescribed in the Sino-British joint declaration of 1984 and the 1989 basic law, a very public tug of war between China and Great Britain over the details of that transition is taking place, and we read about it and see the footage about it all the time.

For example, recent negotiations over the establishment of a court of final appeals and legislative council elections revealed that not all transition details have been resolved.

The stakes riding on this transition are enormous. Hundreds of billions of dollars in commerce and the fate of over 6.5 million people, including 30,000 American residents of Hong Kong, are dependent in part upon Deng's promise of "one country, two systems" and the respect for local rule with a high degree of autonomy.

Needless to say, nearly everyone seems to have an opinion on what will happen in Hong Kong in 1997, but few seem willing to bet their citizenship on it.

Indeterminacy over Hong Kong's fate accounts for the disparate views of government officials, scholars and the press. Predictions range from optimistic scenarios of the continued preeminence of Hong Kong as a commercial center to cataclysmic prophecies of its demise. Often these highs and lows are voiced by the same source.

For example, in November 1994, *Fortune* magazine identified Hong Kong as the single best city in the world in which to do business. Then only 1 month ago *Fortune* ran an article entitled "The Naked Truth About Hong Kong's Future: It's Over." If Charles Dickens were still alive he might be inclined to write a book about Hong Kong and name it "A Tale of Two Colonies."

Unfortunately, foreign policymakers do not have the luxury of merely predicting what will happen in Hong Kong. We ultimately must craft a foreign policy despite the countless opposing predictions and scenarios. So far, however, examination of U.S. foreign policy vis-a-vis Hong Kong and the People's Republic of China have focused on the elaborate and legalistic discussions of whether, for example, the Sino-British joint declaration requires one or two foreign judges on its court of final appeals.

Admittedly, these controversial issues will have a profound impact on autonomy, governance by rule of law, democratic institutions and basic human rights in Hong Kong; nevertheless, more mundane but no less important issues also must be considered by U.S. foreign policymakers.

For example, Hong Kong currently enjoys special status only granted to several countries for the purpose of U.S. export control laws and regulations. Although Hong Kong is to remain a separate customs territory after 1997, several important questions must be raised. Can the United States remain assured that Hong Kong's export and re-export licensing regimes will be handled as efficiently after 1997 as they are now? Can we assure that our dual-use or munitions exports will not fall into the wrong hands? These are but a few questions that deserve an answer.

Export control issues are merely, of course, one small subset of the hundreds of foreign policy issues and agreements that the United States must reexamine during the 1997 transition. Fortunately, our task of reexamining these commitments is aided by legislation enacted in 1992.

The U.S. Hong Kong Relations Act provides a sound foundation and constructive framework for our analysis. First and foremost, this legislation requires the United States to apply the same laws and agreements toward Hong Kong after 1997 that were in force before that date, but it also permits the President to suspend those agreements if the President determines that China is not fully respecting Hong Kong's autonomy.

Throughout these next 700-plus days, and even after July 1, 1997, we will continually assert our sovereign right to examine and reexamine our relationship with Hong Kong. Inherent to that examination will be a discriminating review, I am sure, by both the Executive and Legislative branches of the United States government of China's promise to respect local rule.

By performing our responsibilities and determining what U.S. foreign policy is vis-a-vis Hong Kong, is in the national interest of the American people, we can simultaneously make clear that it is in China's self-interest to restrain from interfering in the governance of Hong Kong and to respect the basic human rights of the Hong Kong people.

I will be interested to see to what extent the PRC Hong Kong relationship becomes a model for PRC relationships with other cities within the PRC. I think there is already some push to see that happen.

Today we are fortunate to have a distinguished group of witnesses to aid this subcommittee in its important oversight task which I have just described.

From the Department of State we are honored to have Mr. Kent Wiedemann, the Deputy Assistant Secretary of State for East Asian and Pacific Affairs. Mr. Wiedemann has a distinguished 20-year history with the U.S. Foreign Service. Prior to his most recent assignment Mr. Wiedemann was special assistant to the President and senior director for Asian Affairs at the National Security Council.

In addition, we are honored to have Dr. Gerrit Gong, Dr. Mark Michelson and shortly to join us—she is testifying elsewhere—Ms. Dinah PoKempner.

Dr. Gerrit Gong is the Freeman Chair in China Studies and the director of Asian Studies at the Center for Strategic and International Studies. He formerly served at the State Department at the office of the Undersecretary for Political Affairs and as special assistant for two U.S. Ambassadors at the American Embassy in Beijing.

Dr. Michelson is currently vice-chairman and next year's president of the American Chamber, Hong Kong, the third largest American chamber in the world. Dr. Michelson is also a Fulbright scholar with over 20 years of experience consulting for American businesses in Hong Kong.

And finally, then, we are pleased to have Ms. Dinah PoKempner, a legal counsel for Human Rights Watch/Asia. Ms. PoKempner directs research on Hong Kong and Indochina for that human rights monitoring organization, and has previously lived in Hong Kong. She is a graduate of Columbia University School of Law and Yale University.

Secretary Wiedemann, we are very pleased to have you here. I mentioned we have a Republican conference ongoing and our ranking member is involved in testifying himself before another subcommittee. I regret that there are not more people here, but we will be just as interested in reviewing your comments, and I very much appreciate your testimony.

Your testimony, along with the other witnesses, will be made part of the record in its entirety. You may summarize your statement or proceed in any manner that you wish; however, to facilitate a good dialog, I would appreciate it if the witnesses can try to limit their remarks to something like ten or twelve minutes, if that is possible, so that as members do arrive we can have an opportunity for full dialog and questions.

Welcome. Thank you for coming.

Mr. WIEDEMANN. Thank you, Mr. Chairman.

Mr. BEREUTER. You may proceed as you wish.

Mr. WIEDEMANN. I will seek to condense my remarks and keep them within the timeframe you indicated. I would also like to have read into the record, if it is OK with the chair, a speech made on May 2 by our Consul General in Hong Kong, Mr. Richard Mueller.

Mr. BEREUTER. Without objection, that will be the case.

[The information appears in the appendix.]

STATEMENT OF MR. KENT M. WIEDEMANN, DEPUTY ASSISTANT SECRETARY OF STATE FOR EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. WIEDEMANN. Mr. Chairman, thank you for the opportunity to appear before you today to discuss Hong Kong's prospects up to and beyond 1997.

The territory will revert to Chinese sovereignty in only 700 days, as you mentioned. Assistant Secretary Lord, who is currently engaged in meetings with the president of South Korea asked me to pass on to you some of the experiences and impressions that he gained during a recent trip to Hong Kong.

During that time he met with Governor Patten as well as with Chief Secretary Chan with the Amcham, and with local business and political leaders.

I would also like to include in the record, as I have said, the speech by Consul General Mueller dated May 2, which I think, in my own view, presents a very strong, candid and a robust statement of U.S. interest in Hong Kong, and indeed I think echoes many of the themes that you just propounded in terms of America's responsibility to keep a watch on the process of reversion in a way that meets and preserves U.S. interests.

Governor Chris Patten expressed appreciation for U.S. policy, calling the Hong Kong Policy Act of 1992 and the report that we delivered to Congress in March of this year very sensible, very balanced and helpful.

Both the Governor and Chief Secretary Chan expressed deep concern, however, over some proposed U.S. legislation seeking to reopen the screening process for screened-out Vietnamese asylum seekers.

Mr. Chairman, with July 1, 1997 less than 2 years away, Hong Kong remains the prosperous, dynamic place that has rightly earned its reputation as one of the world's free market bastions. Business confidence remains strong, although a significant number of Hong Kong people left the territory as confidence eroded, right after the Tiananmen tragedy in China in June 1989. Many of those people have returned to Hong Kong in the past few years. Nonetheless, Mr. Chairman, the people of Hong Kong remain concerned about their future.

I hope to explain what the United States has been doing in a constructive way to encourage a transition that assures the people of Hong Kong a high degree of autonomy after 1997.

Like previous administrations, the Clinton Administration supports the 1984 Sino-British joint declaration and the Hong Kong basic law promulgated by China in 1990. These fundamental documents provide sound principles for the smooth transfer of power as

well as a comprehensive and rational framework for continued stability and prosperity in Hong Kong.

The joint declaration established the concept of one country/two systems for Hong Kong and maintenance of local rule with a "high degree of autonomy."

The terms of the joint declaration and the basic law provide that Hong Kong will be broadly responsible for its own internal and economic affairs while China will assume responsibility from Britain for Hong Kong's foreign affairs and defense. While granting Hong Kong a high degree of local autonomy, the joint declaration and the basic law clearly contemplate that, as sovereign, China will have considerable influence in the future of Hong Kong special administrative region.

The U.S. interest in the smooth transfer of sovereignty in Hong Kong is quite considerable. We have long-standing commercial, cultural and social ties with Hong Kong. With \$12 billion in U.S. investments in Hong Kong, the United States is among the top five foreign investors in the territory. The largest American chamber of commerce outside the United States is in Hong Kong. The 34,000 American citizens who reside there comprise the second largest foreign presence in Hong Kong and already outnumber the British.

Hong Kong alumni of American universities number in the tens of thousands. We have numerous academic and cultural exchange programs and visits. Many Hong Kong residents maintain homes in the United States or have immigrated here, enriching our society and strengthening the bonds of friendship between us. These strong and enduring bonds reinforce our natural humanitarian concern about the future of the six million people of Hong Kong. We believe it important that the people of Hong Kong not perceive that they will be abandoned or isolated from established relationships after the territory reverts to Chinese sovereignty.

To assess Hong Kong's prospects, China's interest and stake in Hong Kong must, of course, be examined. Hong Kong has long provided China with an open capitalist market-oriented window on the world. Today there are an estimated 5,000 mainland Chinese companies operating in Hong Kong. As much as two thirds of foreign investment in China since 1980 has come through or flown through Hong Kong. Hong Kong companies are said to employ nearly four million people in the neighboring province of Guangdong alone.

Hong Kong serves as a center for training and expertise for aspiring Chinese entrepreneurs and professionals. One of the best harbors in the world and state-of-the-art communications, banking and shipping facilities, Hong Kong has served and will continue to serve not only as a trading entrepot and a favored place to do business, but also as an engine of growth throughout China. China, we believe, appreciates this fact profoundly.

In addition, China expects that resuming sovereignty over Hong Kong in 1997 and Macao in 1999 will serve as a positive example of the possibilities for an eventual reunification of Taiwan with the mainland.

Although differing circumstances mark the Hong Kong and Taiwan cases, China has another strong incentive to ensure that Hong Kong's reversion occurs smoothly.

Let's take a look at recent developments in Sino-British relations on Hong Kong. A significant development occurred last month on June 9 when British and Chinese negotiators reached agreement on establishing a court of final appeal. I note this morning, it was yesterday in Hong Kong that the legislative council in Hong Kong has passed this understanding between Britain and China on the court of final appeal, which we see as a step forward in establishing or preserving the rule of law as a foundation upon which Hong Kong's prosperity, its basic future, can be assured.

There are, however, some controversies about the court of final appeal which may be discussed by subsequent witnesses this morning.

According to Hong Kong's attorney general, few issues are of more importance to the legal system and to the rule of law than the establishment of this court of final appeal. It will replace the current system of appeal to the Privy Council in London and it has been stipulated in both the joint declaration and the basic law.

When the draft implementing legislation was tabled in the joint liaison group in 1993, an impasse developed. That impasse is now overcome, and I think that the level of confidence in Hong Kong will be increased as a result, as I think was indicated by the vote of support in the legislative council yesterday.

Let us take a look at some other transition arrangements. Mr. Chairman, the joint liaison group has made progress on a number of other transitional issues with recent agreements on ensuring that international agreements will continue to apply to Hong Kong after 1997, replacing the metropolitan law of the United Kingdom with Hong Kong law, translating and modifying the existing Hong Kong legal code, and strengthening links between Hong Kong and Chinese legal authorities.

The joint liaison group has also made considerable progress on treaties, agreements and legal issues. Of the 200 multilateral agreements extended by the United Kingdom to Hong Kong, agreement has been reached on a continued application of 150 agreements. The joint liaison group has approved Hong Kong's continued participation in 30 international organizations. The joint liaison group has also made progress on approval of bilateral agreements between Hong Kong and other governments, and as you mentioned, we are working on the extension of about 16 bilateral agreements ourselves between the United States and Hong Kong.

As a dependent territory of the United Kingdom, certain U.K. laws have been extended to Hong Kong. With China's agreement, a program of "localization" of these laws separately establishing in Hong Kong laws that Hong Kong needs to retain after transition has successfully taken place.

Last, I would like to touch on some areas of concern. Mr. Chairman, as positive as the developments are that I have outlined, there are some uncertainties remaining about Hong Kong's future. Many Hong Kong people are deeply concerned about the future of the legislative council itself. Because of disputes over electoral reforms enacted in 1994 by the Hong Kong government, China has announced that after the reversion of sovereignty in 1997 it will disband the legislative council. It will be finally formed in September.

ber of this year. China may thereafter establish provisional legislature until new elections are held under unspecified rules.

The United States views the dispute over the electoral reforms with concern and regret because we believe stable governing structures are essential to a smooth transition and to Hong Kong's prospects for continuing prosperity.

In the joint declaration and the basic law China declared its intent to have the people of Hong Kong govern themselves, an undertaking which includes a freely elected legislature. Consonant with these solemn obligations we hope that China will support the goal of the smooth transition in the maximum degree of continuity by permitting those elected in 1995 and last year to serve their full terms.

Some 1,000 legal items and 600 ordinances need to be adapted to be consonant with the post-1997 basic law. Although many of the necessary changes are minor, such as dropping references to the British Crown, others are substantive and more difficult.

Certain transitional issues such as the continued right of abode and travel documents, visa arrangements after 1997 also have yet to be resolved.

We have urged both sides to intensify their ongoing efforts on these issues to avoid needless uncertainties and unpredictability after the transfer of sovereignty.

In conclusion, I would say that Hong Kong's reversion to Chinese sovereignty is a work in progress. The final 700 days of British rule will be an important and sensitive time, as you pointed out, Mr. Chairman. In addition to the uneven progress in negotiations between the United Kingdom and China, concerns have arisen over a softening economy and rising unemployment in Hong Kong itself while China also is undergoing an enormous economic and political transition.

In this context, the United States has undertaken a wide range of actions to support a stable transition. Our goal is to cooperate with China, the United Kingdom and Hong Kong in fostering a confident, prosperous and highly autonomous Hong Kong after 1997.

Mr. Chairman and members of the committee, with your help we will continue these efforts through 1997. We encourage visits by Members of Congress and staff to Hong Kong which continue, I am happy to say, to be very many, to complement the administration's own continuing program of high-level visits. We intend to proceed to negotiate and conclude the important bilateral agreements relating to our continuing close, cooperative relationship with Hong Kong. Of course, we will support Hong Kong's membership in the World Trade Organization, APEC and other international organizations.

Chinese leaders say that China shares the goals of the United States and other friends of Hong Kong in the international community—stability, prosperity and predictability. An important aspect of the administration's policy of comprehensive engagement with China is to work with Beijing to achieve precisely these goals.

In addition, U.S. policy envisions a strong, stable, prosperous and open China, increasingly liberalizing China which is the best guar-

antor in the long term of Hong Kong's future as a special administrative region of China.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wiedemann appears in the appendix.]

Mr. BEREUTER. Thank you very much, Secretary Wiedemann. I would like to move right into the questions, but as we do that I hope that those of you who are on the next panel will think about the responses of Secretary Wiedemann and not only make comments about those remarks in his testimony that you think are important or in which you take difference, but also the questions, perhaps, if we set up any kind of a contrast in addition to your former remarks, I would appreciate this kind of interaction. He does not have a chance to respond, but we can give him that on another occasion or he can remain if he wishes.

Secretary Wiedemann, Title II of the Hong Kong Policy Act of 1992 recognizes the United States' authority to terminate separate U.S. legal treatment for Hong Kong if the President determines that China has unduly interfered with Hong Kong's autonomy.

I have about five questions springing out of Title II. First of all, how many agreements or treaties, roughly, does the United States currently have with Hong Kong that would seem to fall under the provisions of Title II? Do we have a summary or survey at this point?

Mr. WIEDEMANN. Yes, Mr. Chairman. I believe, as I indicated earlier, we have, I think, exactly 16 bilateral agreements.

Mr. BEREUTER. You are working on 16, you mentioned. Is that the range, or are those only 16 of a larger number?

Mr. WIEDEMANN. That is the number of treaties which we believe must be continued past the reversion in 1997 in order to meet basic U.S. interests, including some that have emerged recently stressing increased cooperation on law enforcement with respect to such things as money laundering and extradition and the like. Also very basic things like civil aviation agreements and basic trade agreements that undergird, for example, our granting of most favored nation trading status to Hong Kong.

Mr. BEREUTER. You think that the full range, then, is 16 at this point?

Mr. WIEDEMANN. Yes, full range.

Mr. BEREUTER. Is the Department of State evaluating these agreements to see if they are relevant for the post-1997 transition, or in all cases do they continue to be as relevant post-1997?

Mr. WIEDEMANN. Mr. Chairman, we believe that they will be as relevant, given the premise that Hong Kong is to enjoy the autonomy that is provided under the basic law, and will continue to be able to deal with the United States on these issues in a way separate from the ways in which the PRC might deal with us.

Many of these kinds of agreements and treaties that we have with Hong Kong are, I would not say, unique to Hong Kong, but we may not have them with the PRC, and therefore it is important that we do have them with Hong Kong so we can ensure that interests specific to Hong Kong in all these various areas are continued. We have reviewed them thoroughly.

Mr. BEREUTER. Thank you. Despite a number of assurances, some of which I have heard directly from officials from the People's Republic of China, they have also stated they will abolish certain existing democratic institutions and invalidate elections. Are these actions sufficient to trigger the U.S. prerogative to terminate certain agreements with Hong Kong, or do you see their statement as an ambiguous one, or is there something more behind that statement that we should consider before we ask you the question I have just propounded to you?

Mr. WIEDEMANN. Apart from the problem that I mentioned with respect to China's posture on the legislative council, its stated intent to dissolve the legislative council after July 1, 1997, I am not sure what other thing you are referring to, Mr. Chairman, when you said that China has indicated that it will——

Mr. BEREUTER. Is that the——

Mr. WIEDEMANN [continuing]. some democratic institutions.

Mr. BEREUTER. Is that the only obvious one that you can think of at this point?

Mr. WIEDEMANN. Yes, it is. I do not see how—well, first of all——

Mr. BEREUTER. Has there been anything said with respect to invalidating elections specifically?

Mr. WIEDEMANN. Well, the action with respect to the legislative council would be to invalidate an election.

Mr. BEREUTER. Is that the only——

Mr. WIEDEMANN. The fact is that legislative council members will be directly elected; if the legislative council is dissolved by China in 1997, as it says it will do, then that in fact invalidates an election.

Mr. BEREUTER. Is that the only one that you can think of at this point?

Mr. WIEDEMANN. Yes.

Mr. BEREUTER. I would like to move on to the subject of export controls and our export control law. Is there a danger that if the United States continues to respect the special status now that we accord Hong Kong for export controls that our dual use or munitions exports may fall in the wrong hands after 1997? I know that is a matter of concern to certain Members of Congress, especially I think, members of the National Security Committee and this committee has jurisdiction over the export control laws, and we have frequently had difficulties among, but especially between, the two committees—what is now called the National Security Committee and the foreign affairs issue—and I can see this being a potentially volatile issue. What would you say about the potential danger about exports on dual use and munitions falling into wrong hands?

Mr. WIEDEMANN. I would say that we are every bit as concerned about that potential as you, and therefore it is all the more important that we carry forward the agreements that we have with the government of Hong Kong past the 1997 point that deal with very, very firm that we think very effective export controls regarding particularly protection of transfer of U.S. technology to third countries by the Hong Kong authorities.

Obviously, we will watch the situation extremely carefully after 1997. If we are disappointed and we find that China has somehow

violated the integrity of the agreements themselves dealing with technology transfer or is somehow affecting the implementation in a negative way or if we can detect that technology is somehow leaking from the system that we have developed with the government of Hong Kong, then obviously we would have to take another look at it and either renegotiate involving the PRC government or, if necessary, in a final analysis end the agreement as is provided for under the act.

Mr. BEREUTER. Has the administration reached an internal consensus on the issue of retaining what is called 5K status for the shipment of sensitive technology through Hong Kong after 1997?

Mr. WIEDEMANN. At this point we are firmly and resolutely aiming to continue 5K benefits to Hong Kong, that being, I think, certainly one of the cornerstones of protecting American business interests in Hong Kong, and underlying the prosperity of many of our firms there; but again, this is a very, very important issue which we must watch on the basis of national security after 1997.

Mr. BEREUTER. I am sure, as you would imagine, that Congressman Roth's subcommittee, of which I am a member, would be very interested in the administration's views on this issue as, potentially, they change and that briefings would be in order for us at any time that you begin to have any concerns about the continuation of that status.

Mr. WIEDEMANN. As I said, as we monitor it closely, we will be very, very pleased to stay in very close touch with you, sir, and brief you on any developments.

Mr. BEREUTER. Good. Thank you. Late in your testimony, Secretary Wiedemann, you said the United States does not seek to interfere in issues properly the responsibility of other governments. I presume you are referring to China and the United Kingdom.

Mr. WIEDEMANN. That is correct.

Mr. BEREUTER. What leverage does the United States have to ensure that the rule of law, the freedom of press, and other important human rights are respected in Hong Kong after 1997? How do you see the array of opportunities for us to have some leverage as an external country?

Mr. WIEDEMANN. I think first and foremost the nature of our presence in Hong Kong itself provides an incentive to China to live up to its obligations under the basic law and the joint declaration providing for full autonomy, and as we have stated here this morning, that is clearly in the United States' interest. It has served us well. It has brought about creation of a very large and very prosperous American community in Hong Kong, one that I think itself has done much to contribute to the success of Hong Kong over the decades.

If China were to go back on its undertakings with the British government or not honor pledges to the people of Hong Kong itself, then it would pay a dear cost. China, I think, understands that.

It is interesting to note that even back during the time of the cultural revolution in the 1960's when China was an extremely chaotic and, indeed, a very brutal place, that somehow Hong Kong was kept out of the fray, and that was a conscious decision, I think, by the leadership in China to try to insulate Hong Kong from the mess that was then scourging all of China, the reason being, of

course, that China has rightly seen Hong Kong as the goose that is laying the golden egg. They do not want that goose to stop laying that egg.

Mr. BEREUTER. Is that a broadly shared view in the leadership cadre of the PRC?

Mr. WIEDEMANN. I think it is broadly shared. I also would believe, however, that there are some extremely nationalistic Chinese who are focused more on the sovereignty issue than they are on the pragmatic issues of continued prosperity in Hong Kong and what underlies that, which is the rule of law, respect for individual rights, civil rights, and all those things that this country will work to maintain.

Mr. BEREUTER. And would such individuals be found among the people at the leadership cadre level?

Mr. WIEDEMANN. Yes. I believe—

Mr. BEREUTER. Or have quite an impact upon them?

Mr. WIEDEMANN. I believe there are such people at the leadership level in Beijing. I also believe, however, that they are in the minority, and I think that is why largely the policies that China has been carrying out with respect to Hong Kong have been in the right direction, despite difficulties.

Mr. BEREUTER. I have heard some residents of Hong Kong, some China experts in this country and some people of influence and knowledgeable people in the PRC suggest that Shanghai and other major coastal cities will soon be pushing hard to have some of the same special relationships that Hong Kong would have after 1997 with the PRC and that this is a force for liberalization and economic expansion, but it also might be a concern to the leadership of the PRC. What are your thoughts about that subject?

Mr. WIEDEMANN. That is an interesting point. I remember when I was serving as a foreign service officer in Shanghai over 10 years ago the city fathers then saying that they aspired in effect to replace Hong Kong one day as a center within Asia for finance and headquarters of multinational corporations and all the rest.

Indeed, I think they have been embarked on a program to one day take on some of those roles. I think given the continuing success of Hong Kong as a regional center, as a major entrepot, I find it difficult, frankly, to see Shanghai taking over that role in one foreseeable future. It does not yet have anywhere near as good a port, does not have anywhere near the infrastructure, and it certainly does not have the legal environment or the political environment that Hong Kong has that foreigners find so conducive to doing their business.

Mr. BEREUTER. Would you think they would try to take on some of the special relationships that Hong Kong has with the PRC that they see advantageous, whether or not they are able to replace? Would they be pushing for it? Would this be a source of discontent or friction within the PRC as these cities seek to have similar kinds of advantages?

Mr. WIEDEMANN. Actually, what I see happening is a kind of evolution in which these cities, and the more worldly and experienced leaders in these cities, are beginning to reach out and forge links with Hong Kong in cooperative ventures with Hong Kong. You see an awful lot of Hong Kong investment, of course, in neighboring

Guangdong Province, but you are also beginning to see a great deal of Hong Kong investment in Shanghai itself and Shanghai firms siting themselves in Hong Kong to form joint ventures and begin to share in some of the new telecommunications business, a lot of the electronics manufacturing that is a benefit both to Hong Kong and to mainland China, and the fact today, I think, is that Shanghai, Tianjing, Beijing to some extent, Guangzhon, and other major coastal cities in China are becoming more and more partners with Hong Kong. It is particularly true in the far south in Guangdong, but as I say, the phenomenon also extending up into Shanghai.

Mr. BEREUTER. I am told that most Americans, and indeed most non-Chinese, tend to underestimate the level of contact between the PRC and the range of contact between the PRC and Taiwan, and the acceleration of those relationships. What will change in Hong Kong, Taiwan, PRC relationships through Hong Kong after 1997?

Mr. WIEDEMANN. It is unclear. Taiwan, of course, now has a very vigorous, very prosperous relationship with Hong Kong, ships a great deal of its exports which ultimately end up on the mainland through Hong Kong.

The PRC and Taiwan have been discussing in recent months very, very seriously direct trade links or trade links that would go through customs-free areas that would make somewhat less necessary some of the indirect trade that goes through Hong Kong, but Hong Kong will always play, I think, an important role.

One of the items that Taiwan and the PRC were to have discussed this summer was specifically what will be Taiwan's relationship with Hong Kong after 1997 in terms of the rights of Taiwan to continue to ship directly to Hong Kong, carry on air services and those kinds of things.

Unfortunately, that dialog which was to take up those practical issues was interrupted last month as part of the reaction of the PRC against Taiwan for——

Mr. BEREUTER. President Lee's visit?

Mr. WIEDEMANN [continuing]. President Lee, you are exactly right. So we hope for an early resumption of those talks.

As you see, Taiwan's involvement on the mainland has been a rather new phenomenon. It is only about 10 years old, but it has gone extremely quickly to the point where there are some \$10 billion or so of Taiwan capital now invested in the mainland, is one of China's primary sources of investment capital. Much of Taiwan's well-known manufacturing, particularly in the labor-intensive fields, have been shifted to China; there is a good symbiotic relationship going there, but as we all know so well from the newspapers these days, there has also been introduced a very, very profound political confrontation between the two entities which have certainly interrupted the political talks, but I must say all indications are that economic ties between the two are continuing.

Mr. BEREUTER. It seems to me, I would say parenthetically, the Taiwanese/American impacts on the political process here in the United States are beginning to worry the government of Taiwan. They are concerned that the escalation of activities here, may in fact be contrary to the interest of Taiwan.

I would like to come back to the subject of rule of law, freedom of press, other important human rights. Some critics argue that these rights are eroding now. What is your attitude about that charge and what does the United States have today in the way of leverage with respect to human rights within Hong Kong?

Mr. WIEDEMANN. The erosion to which you refer, I would believe, probably refers to what some see as a tendency regarding the Hong Kong press for some self-censorship—in other words, for the free press in Hong Kong to kind of pull its punches in commenting on the PRC and what is going on inside the PRC. And indeed, that does worry Hong Kong citizens, of course, as well as the foreigners who are in Hong Kong.

An open transparent free market, a predictable, effective system really does depend on a free press. That is the experience of this country, that is the experience of many others, and we are very concerned that there continues to be a functioning free press in Hong Kong.

There have been some other concerns, I think beginning in 1989 when there were large-scale demonstrations by Hong Kong citizens—spontaneous demonstrations—to express their outrage at the events on the mainland, particularly Tiananmen Square and the killing of hundreds of people there; a concern since that the Hong Kong authorities have sought to, let us say, dampen down a possibility for large-scale anti-PRC demonstrations from time to time.

The Hong Kong authorities would argue that what they have done is not abridge the right of people to freely assemble or to freely speak their points of view, but rather have undertaken prudent measures to ensure that public order was maintained and that everyone's rights were indeed observed; that is, that all points of view were expressed, that crowds did not grow so large as to threaten public order and that kind of thing.

Nonetheless, I think there still are people in Hong Kong, including some Americans who would believe that there is, as you say, a hint of some pressure on some fundamental civil rights.

As for our leverage, I think again our leverage is quite considerable given that our presence in Hong Kong is so profoundly important, both to the government of Hong Kong, the people in Hong Kong and ultimately to China.

We have leverage both through our relationship with China and with the Hong Kong government, our Amcham in Hong Kong is extremely effective and very forthright in expressing its concerns about these kinds of issues. Not only do we have that relationship with Hong Kong through which we can exert leverage, but also, of course, ultimately we have our relationship with China, and through our comprehensive engagement with China we will continue to make known to China that the United States has a fundamental interest in seeing that Hong Kong maintains the rule of law, civil rights, and human rights that have made it the success that it is.

Mr. BEREUTER. That comment of yours relates to a statement that you just used to conclude your testimony. Near the end of your testimony you indicate that the United States will work vigorously to bolster local and international confidence in Hong Kong, and I guess that kind of a statement would raise questions in skeptics

whether or not we, the government of the United States, where the American people see so much importance in our economic relationship there, that we might take on something of a cheerleader role and forget about the concerns that we properly have as the American nation for human rights and variety of freedoms.

What would you say, if anything, to reassure people in that respect that we will not forget that economic interests will not predominate to the extent that we tolerate silently the erosion of human rights, including civil rights?

Mr. WIEDEMANN. Well, I think such criticism really sells us short and sells short the basic impulse of Americans, but more particularly the policy that one can see playing out in Hong Kong today.

I made reference to the May 2 speech by our Consul General who spoke at great length about America's dedication, devotion and resolve to speak out and to work with the Chinese government on behalf of the maintenance of individual rights, civil rights, both because it is the right thing to do in itself, but also because those values, those characteristics of the Hong Kong society as it exists now undergird the basic prosperity and the success overall of Hong Kong, which is in our interest. Assistant Secretary Lord also went to Hong Kong recently and made a speech along the same lines.

It is very clear that U.S. policy is not simply to stand by and watch a process unfold under the control of the governments of the United Kingdom and China or, as you put it, a cheerleader. We are going to be in there with our sleeves rolled up as we are now watching the process, talking to the British, talking to the Chinese, working with the Hong Kong government very, very closely all the way up to the period of transition and certainly beyond.

Mr. BEREUTER. A very final pragmatic question—what kind of representation do you think the United States will have in Hong Kong in the future? What kind of numbers, personnel, are required in contrast to our current representation in Hong Kong?

Mr. WIEDEMANN. That question, of course, is being looked at right now very, very carefully by all the agencies that are represented in Hong Kong. We have a very large consulate in Hong Kong—large not only because Hong Kong itself is very important but because Hong Kong, just as it serves as a very good headquarters location for many U.S. multinational corporations, it also happens to serve for the U.S. Government as a good regional center for lots of operations by a whole plethora of U.S. Government agencies.

We will have to examine the extent to which Hong Kong will continue to serve as a good, useful place for agencies such as the Treasury Department's various elements such as Secret Service which looks at counterfeit money issues and the like in the region, the Federal Aviation Administration which looks, of course, at aviation safety throughout the region the extent to which Hong Kong will continue to serve as a useful base for those agencies. Where it does, then I think we will continue to try to keep those presences there.

If I were to guess now, I would say the Consulate General in Hong Kong will remain a pretty large presence in Hong Kong.

Mr. BEREUTER. But you will look at that systematically and come to the authorizing and appropriation committees in a timely fashion, I hope, and make your recommendations about changes.

Mr. WIEDEMANN. Yes, we will.

Mr. BEREUTER. Thank you very much. I appreciate your responses and your testimony. Are there any concluding remarks that you would like to make, Mr. Secretary?

Mr. WIEDEMANN. Mr. Chairman, I would like to just say that we very much appreciate the great deal of interest you are taking in Hong Kong. We know that it will continue. We look forward to working very closely with you as we head toward July 1, 1997 to guarantee the continued prosperity and direction of Hong Kong.

Mr. BEREUTER. Thank you very much. We will ask the second panel to come forward. Has Ms. PoKempner arrived? I do not know her by sight. She has? Excellent. Welcome. Glad you came. Ms. PoKempner, I introduced all three of you previously, and so I wanted you to know that.

Ms. POKEMPNER. Thank you, Mr. Chairman.

Mr. BEREUTER. I am very much appreciative of all three of you coming, and unless there is some view to the contrary, I will just call upon you for your testimony in the order that you are listed on the agenda for the day, and that would provide that the first witness on the second panel would be Dr. Gerrit Gong. I think he is the Freeman Chair in China Studies, Director of Asian Studies, Center for Strategic and International Studies.

As I mentioned, your entire statements will be made a part of the record. Please take 10 minutes or so, if you would like that much, and summarize in any fashion or read as you wish. Please proceed.

STATEMENT OF DR. GERRIT W. GONG, FREEMAN CHAIR IN CHINA AND EAST ASIAN STUDIES, DIRECTOR OF ASIAN STUDIES, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES [CSIS]

Dr. GONG. Thank you, Mr. Chairman. As we discussed before this hearing began, it is a special privilege to come before you in a spirit of open discussion on important issues with a desire for constructive involvement at a crucial time. I very much appreciated your lines of questioning which I analyzed to include three basic parts. First, as I understood it, you asked a series of questions regarding how the United States would safeguard sensitive technologies in the transition period under Title II, Export Control Laws, Dual Use, 5K Status, and so on. These are certainly important issues.

Second, I understood you to have a particular interest in U.S. involvement and U.S. interest in Hong Kong's ongoing transition in terms of rule of law, including freedom of the press and other questions related to human rights; and you asked these questions from several different angles, including what U.S. leverage is, what U.S. interests are, how we balance economics, human rights, and so on. That set of questions also struck me as extremely important.

Mr. BEREUTER. You summarized that better than I did. Thank you.

Dr. GONG. And then last you also raised and touched on, I think, a third important issue, which is the triangular relationship between Hong Kong, Taiwan and the PRC; and I hope that as we continue these discussions, as you say in this open spirit, that we will be able to touch on those issues in greater detail as well.

My testimony, I think, applies to each of these areas, and I would like to summarize it by beginning, as my written testimony does, with a personal experience.

Earlier this month on July 3, the day before our country's birthday, I had the privilege to call on the Chief Justice of the Supreme Court in Hong Kong. I was impressed by his statement that Hong Kong's success rests on three pillars—its energetic people working in an open market system, its rule of law and its civil service. Let me touch on some recent developments in the three key areas, and then add several contextual points that address some of your broader concerns about our overall relationship prior to and after 1997.

Let me talk first about current developments—beginning with Hong Kong's legal system. I think we are all aware, as Mr. Wiedemann noted, that yesterday in a 38 to 17 vote the Hong Kong Legco ratified the Sino-British agreement of June 9, 1995, concerning the court of final appeal. As is often the case, this agreement is a compromise that symbolizes both the importance and the contentious nature of ensuring the continuation of the established rule of law. On the one side, the good news, the agreement does avoid a gap in jurisdiction by establishing the court, albeit on July 1, 1997.

Yet, some disagreement continues in three main areas: over the timing of the court's establishment (some people still hope it might be established earlier than July 1) over the number and participation of judges from other common law countries; and over the court's jurisdiction, the interpretation of which hinges in part on definitions of Article 19 of the Basic Law.

The Court of Final Appeal agreement is important, but so is, as we heard, the continuing localization and adaptation of Hong Kong law, and the maintenance of the common law system, including the legal and judicial exchange.

I was also struck by the Hong Kong Supreme Court Chief Justice's statement that countries which have kept a viable common law tradition have done so through an ongoing living association with an always-evolving common law practice and interpretation.

On a more technical basis, there are really three articles that primarily discuss this crux issue regarding the jurisdiction of the court—articles 19, 35 and 158 of the Basic Law which are described in my written testimony in greater detail.

Second, regarding the civil service: I think many of us were heartened by the June 30 to July 3 visit of Mrs. Anson Chan to Beijing. While I was in Hong Kong people said to me: we can mention this to you, but you must not say anything about it until it becomes public. Of course it has become public, I think in a way that, while the discussions continue in Hong Kong about how much was done and in what way, clearly the overall, I think, positive impact was to say there are now direct ties between the chief secretary, a very able chief secretary, and the appropriate authorities

in Beijing. And I think it is also important to note that this follows an important signal from the PRC foreign minister, Qian Qichen, who, in the June meeting of the preliminary working committee, is on record stating the importance that Beijing attaches to confidence in the civil service in Hong Kong.

Third, let me say something about the general economic climate as it relates to the confidence of Hong Kong's people. The June 30 Sino-British joint communique regarding the airport authority and railway illustrates the ongoing recognition on the part of Beijing as well as, of course, the people in Hong Kong that competitive infrastructure is important. We see this in ports; some of us are hopeful that the issue regarding container terminal nine, ten and eleven can be resolved, perhaps in some kind of basket approach, that the ongoing effort to keep Hong Kong competitive both as an entrepot with China and, equally importantly, as a key regional center will continue.

Let me note now several points of broader context, as these, Mr. Chairman, and Mr. Berman, relate to the broader issues you have raised regarding this committee's interests in Hong Kong's transition.

First, as sovereignty shifts to the PRC, this is an opportunity for leaders in China, not only in Beijing but throughout the provinces, not to be jealous of but to welcome Hong Kong's successes and its continuing successes as China's own.

You raised, Mr. Chairman, the issue of whether there is some competitive feeling between Beijing and Shanghai and the southern part of China. While there is no doubt some competitive aspects exist, China is a big place—22 provinces, five autonomous regions, three special municipalities, 1.2 billion people—all different. There should be room enough for a Shanghai, as big as it is, and a Hong Kong connected to the southern part of China, as big and as vibrant as those two areas might be.

While some competitive elements exist, there is no reason why relations have to be zero sum; our policies, in my view, ought to stress that fact.

Likewise, our hope for China's assessment of its own self-interest is that this transition should represent not only the fruition of China's national interest but also the honoring of its international commitments.

Second contextual point: while the United States can and must highlight, as we are doing, our long-established interests and ties in Hong Kong, we cannot from here mandate conditions in Hong Kong prior to or after 1997. Our ties to Hong Kong must ultimately be reflected in the relations between Hong Kong and Beijing, and in our relations with Beijing, well maintaining close ties with Hong Kong. This triangular relationship, in my view, prospers most by us having strong direct relations with Beijing, particularly in the economic area, which is an important prerequisite for Hong Kong's continuing success.

Needless to say, the economic fundamentals—this includes PRC growth with moderated inflation and a controlled soft landing, solid Hong Kong growth with carefully monitored inflation and unemployment—are essential to Hong Kong's continued success.

Third contextual point: the U.S.-Hong Kong Policy Act of 1992 specifies yearly reports on conditions in Hong Kong. Some feel that limiting the areas which are brought under this policy act will minimize the potential areas of friction as we move towards the 1997 transition. I understand that. We are not interested in creating new areas of conflict or disagreement, but my view is slightly different. It seems to me that given the possibilities for unexpected developments in Hong Kong it is important, Mr. Chairman, as your line of questioning indicated, that we constructively expand these reports to include other areas such as legislative elections, the election and accountability of the chief executive, treatment of political parties, independence of judiciary and so on. This is an important constructive role we can play by monitoring, by watching, by keeping attention focused on what is happening. It is not to say we can mandate or dictate what happens, but we do have a long-standing interest in what happens there and making that manifest in terms of mandated reports.

Fourth, clearly our interests in Hong Kong, as you indicated, are not simply economic. They also include personal ties, they include long-standing professional relationships that should be continued and expanded.

Mr. Chairman, you indicated your own interest in making sure that you and members of the committee and others, not only in the Congress but the Executive Branch, as well as a wide range of people-to-people relations across the board continue to be strengthened in this important period prior to 1997 and thereafter. These symbolize, as we said, that our interest is not simply economic, it is also personal, and that those two can fit together.

Last, we need to be mindful of other transition issues beyond but involving the commercial and legal reform areas. We have mentioned some of these—right of abode, visas, bill of rights, the through-train questions regarding the Legco. Obviously, as I just noted, these are issues we want to monitor carefully, but in the spirit with which we began. We have an interest in watching what happens and being a player because of our own long-standing interests, but within a framework of constructive relations with Beijing.

In summary, the essential issue in the upcoming months prior to July 1, 1997 is whether and how Britain and the PRC mutually accommodate each other without impinging on Hong Kong's abilities to maintain its uniqueness within a new sovereign framework. To assist Hong Kong in this transition is in our interest. Stressing our long-term interest, our ties and commitment to Hong Kong and its people, even while developing, as I have suggested, a genuinely constructive and productive relationship with China will in the end best allow Hong Kong to remain itself.

I thank you again for the opportunity to share these thoughts and look forward to the chance for interaction.

[The prepared statement of Dr. Gong appears in the appendix.]

Mr. BEREUTER. Dr. Gong, thank you very much for your excellent and well-organized statement. Just as you were beginning we were joined by the distinguished ranking member of the subcommittee, Mr. Berman, and I had mentioned earlier that he was testifying before another committee. We can interrupt at this point if there is

anything that you would like to say or introduce into the record, Mr. Berman.

Mr. BERMAN. Well, I would just like unanimous consent to put my opening statement into the record, if I might.

Mr. BEREUTER. Without objection.

[The prepared statement of Mr. Berman appears in the Appendix.]

Mr. BERMAN. Thank you very much.

Mr. BEREUTER. And we are also joined by the chairman of the full committee, Ben Gilman. Mr. Chairman, we are very pleased that you have joined us today, and we can welcome comments from you or we will proceed to the other witnesses, as you prefer.

Mr. GILMAN. I want to thank you for arranging this hearing. It is time, again, that we take a look at what could or would be happening in Hong Kong. The year 1997 is not that far away, and a number of our Hong Kong citizens are worried; self-censorship among Hong Kong newspapers, radio, and TV has become common as reality of rule by Beijing begins to sink in, and the whole region is certainly worried, too, about People's Republic military buildup. I think it is appropriate that you have explored this with some of our good experts, and I look forward to hearing some of their testimony.

Mr. BEREUTER. Thank you, Mr. Chairman. Now we will turn to Dr. Mark Michelson for his comments. He is currently the vice-chairman of the American Chamber of Commerce in Hong Kong, which I described is the third largest chamber and which I heard might be the first largest chamber outside the United States. In any case, it is an important group, and we are pleased to have your testimony, and you may proceed as you wish. Your full statement will be made a part of the record.

STATEMENT OF DR. MARK C. MICHELSON, VICE CHAIRMAN, AMERICAN CHAMBER OF COMMERCE IN HONG KONG

Dr. MICHELSON. Thank you very much, Mr. Chairman. Mr. Chairman, Mr. Gilman, Mr. Berman and distinguished guests, it is a pleasure and a privilege for me to appear before you to testify on an issue of great importance—the American community in Hong Kong—and we believe to the economic and strategic interests of the United States.

I manage a consulting business in Hong Kong where I have resided for 15 years and travel regularly throughout the Asia Pacific region. In addition, I have lived in Japan on three separate occasions over the past 26 years, but I certainly do not want to get into those issues today.

Today I am offering a perspective as Vice Chairman of the American Chamber of Commerce in Hong Kong which we believe is the largest American chamber outside of North America, with some 2,800 members.

Americans, as you have already heard, I think, represent the largest foreign business community with over 31,000 U.S. passport-holders living in the territory. More than 1,000 U.S. companies are located in Hong Kong contributing to direct investment estimated at \$10.5 billion on an historic cost basis.

Hong Kong is, as I understand, the United State's thirteenth largest trading partner and eleventh largest market. The United States is Hong Kong's second largest trading partner after China. Total trade between Hong Kong and the United States last year reached \$21.1 billion. Unusually, the United States had a surplus of \$1.7 billion.

In addition, Hong Kong is an important entrepot for Sino-U.S. trade, handling nearly 70 percent of China's exports to the United States and around one third of U.S. exports to China.

U.S. firms are generally perceived as preferred employers in Hong Kong as they are in China. American companies generally serve as models for businesses in terms of worker welfare and safety, environmental responsibility and good business ethics. The universal business principles adopted last year by the American Chamber of Commerce in Hong Kong have served as a basis for businesses throughout the Asia Pacific region, and we have included a copy in our full submission.

Americans, on the other hand, have made a substantial contribution not only to Hong Kong's economic success but also to other aspects of life in the territory. As Secretary Wiedemann mentioned, over 10,000 students from Hong Kong study in U.S. universities. An estimated 60,000 Chinese working in Hong Kong hold degrees from American universities. Our consulate and numerous American organizations are active in community services in such areas as health, education, sports and culture.

Therefore, Americans have a strong stake and commitment to Hong Kong and naturally are concerned and involved with its transition to Chinese sovereignty. The attractions for American companies and other organizations remain substantial. The Heritage Foundation ranks Hong Kong as having the world's "freest economy." Fortune magazine recently honored the territory as the best city in the world for business just a few months before announcing the death of Hong Kong in a dramatic cover story.

To paraphrase Mark Twain, the reports of Hong Kong's demise are greatly exaggerated. Most of us do not recognize the Hong Kong described in the Fortune article. Hong Kong certainly has problems, current and potential, but anyone who visits the territory can attest to Hong Kong's economic vitality.

The importance of Hong Kong as an Asian hub and a gateway to China is described in my written testimony. Hong Kong has several advantages that make it particularly attractive to international business, and I think it will continue to have those advantages up to and beyond 1997, maybe some deterioration, but as others have said, for example, Shanghai and other cities in China will place an increasingly prominent role, but we think that there is room for both Hong Kong, Shanghai and other cities in China. There is plenty of business for all of us.

Particularly important, however, is the strength of the people of Hong Kong who have demonstrated outstanding skill and toughness countless times during the past 150 years. This is an invaluable asset that so-called gloom and doom assessments of the territory's future tend to short change. In fact, rapidly rising costs, a by-product of Hong Kong's economic success, are cited by our mem-

bers as far more important at this point than concerns about the transition to Chinese rule.

An article by Gary Silverman in the July 6, 1995 *Far Eastern Economic Review* supports this view. He wrote, "Hong Kong's biggest problem now is not politics—it is costs. Chronic inflation and lagging productivity are taking a toll on growth, but do not underestimate Hong Kong's resilience." And I have included a copy of that article also in the submission.

There are at least two transitions taking place in Hong Kong. The first is the transition from British to Chinese sovereignty, and the second is the integration of Hong Kong and the south China economies. Both the previous witnesses have mentioned this, but at this point some four million workers in neighboring Guangdong province are employed by Hong Kong companies. Hong Kong is by far the largest external investor in China, while Chinese entities have brought in an estimated \$25 billion into Hong Kong, and of course, Hong Kong is not only a major investor in China but also in many other places around Asia, including Vietnam.

While economic integration has progressed relatively smoothly, the political transition has run into many more obstacles. Both British and Chinese distrust each other. In part, this is a legacy of long colonial rule and Chinese suspicions about what the outgoing British rulers will leave for China. These misgivings about British intentions are sometimes extended to other non-Chinese, including Americans.

We in the American Chamber of Commerce meet regularly with Hong Kong and Chinese officials and have encouraged both sides to overcome these suspicions and proceed as rapidly as possible to settle remaining issues. It is in the interest of everyone concerned to do so.

Still, significant issues remain to be resolved. They include localization of laws, adjustment or renegotiation of international agreements, definitions of right of abode and permanent residency, and approval for various infrastructure projects such as the much-needed container terminals that Dr. Gong mentioned earlier.

Our chamber has expressed our views on these and other issues to Hong Kong officials and to senior leaders in Beijing during our twice yearly delegations to Beijing. We are not insensitive to the risks associated with Hong Kong's future, whether it be the maintenance of the rule of law, the freedoms that Hong Kongers now take for granted or Hong Kong's very successful economy. Hong Kong is, as has been described before, in many ways a bastion of free enterprise, but even now before China's resumption of sovereignty there are some government-funded organizations that are playing a larger role in some sectors of the economy, for example, sometimes at the expense of competitive private firms. Continuation of this development beyond 1997 causes us some concern.

The current fragile state of U.S. relations with China has exacerbated the situation. I believe you, Mr. Chairman, have commented on this at some length. In particular, continuation of MFN for China is crucial to the stability and prosperity of Hong Kong. Thus, I would like to express our appreciation to the Chairman and his colleagues for your successful efforts to secure renewal of MFN in the House earlier this month.

Recently, we have been encouraged by progress toward solving some of the issues of concern, and these have been mentioned already. But briefly, I will just mention, of course, last month U.K. and Chinese negotiators reached agreement on establishing a court of final appeal. While some of us would have preferred that the court be established before July 1, 1997, the local and foreign business community—and I believe most of Hong Kong's residents—concerned with this matter support the settlement as an acceptable compromise. There is considerable opposition, but most of us believe that this is pretty good under the circumstances, and as you know, the legislative council also supported that by a better than two-to-one margin.

During the past few weeks the United Kingdom and China have also come to terms on the financing of the new airport at Chek Lap Kok, a key development for Hong Kong's future and for dealing successfully with other related matters in which U.S. companies have a very direct interest.

Perhaps most dramatically, again as was mentioned earlier, Hong Kong's No. 2 official, the Chief Secretary, Anson Chan, recently had cordial and apparently productive meetings in Beijing with China's foreign minister and the director of the Hong Kong and Macao affairs office. Certainly, tensions remain between the British and Chinese, but prospects for settling some important differences have brightened.

Despite the inevitable bumps along the way, the majority of our members are relatively optimistic about prospects for Hong Kong. Every year the American Chamber of Commerce in Hong Kong conducts a survey of its members to determine the level of confidence in both Hong Kong and China. While the 1995 survey has not yet been completed, last year's results showed 81 percent of respondents indicating either a favorable or a very favorable outlook for Hong Kong during the next 5 years, and that means willing to either increase or maintain their current investments.

Of those expressing an unfavorable view, practically all of them cited the increasing cost of doing business in Hong Kong. Political factors were quite low on the list of concerns. An even higher percentage of respondents, by the way—some 94 percent—expressed a favorable or very favorable opinion about the investment climate in China for the next 5 years.

The principal legislation defining U.S. interest in the transition process has already been mentioned, the U.S./Hong Kong Policy Act. This act establishes provisions for implementing relations with the Hong Kong special administrative region and acknowledges support for the policies reflected in the Sino-British joint declaration of 1984.

The American Chamber of Commerce in Hong Kong believes that this legislation serves American and Hong Kong interests well in its present form and that amendments or additional legislation are unnecessary; however, Dr. Gong's suggestions about perhaps extending the investigations to other areas may very well be productive.

At the same time, representatives of the U.S. Government regularly express their views on the importance of maintaining the conditions that have helped Hong Kong become stable, prosperous and

attractive international business. As Mr. Wiedemann referred to earlier, the U.S. Consul General in Hong Kong in a speech to the Foreign Correspondents Club on May 2 in Hong Kong identified factors crucial to the territory's continued success while emphasizing the U.S. commitment and interest in the continued prosperity and stability of Hong Kong.

We believe that the responsibility for resolving issues concerning the transition lies mainly with the British and Chinese government. However, personally I think that—I suspect that the U.S. Government probably will play a greater role, especially beyond July 1, 1997 by virtue of the American position in the world and our strong presence in Hong Kong.

However, this view about British and Chinese responsibility does not stop us from providing advice, sometimes unsolicited, regarding matters important to Americans living and working in Hong Kong. We want to continue to contribute to Hong Kong and the new special administrative region.

Our opinions are summarized in a paper called "Elements Fundamental to Hong Kong's Success," 47 points identified as reasons why international businesses operate and invest in Hong Kong, and I have included a copy of this also in my submission. These elements include safety, security, education opportunities, environmental matters, infrastructure, immigration policies, fiscal policies, a stable and reliable legal system, and a social environment secure from corruption and coercion.

Our chamber also promotes business ethics and social responsibility among our own companies in Hong Kong, China and throughout Asia. We have taken the lead in organizing support for developing principles of ethics among local and foreign members of the Hong Kong business community.

In addition, the chamber is in the midst of a year-long luncheon program on freedom of speech in Hong Kong featuring speakers from American-, local- and PRC-supported publications.

Let me conclude by mentioning that in May Senator Craig Thomas stated the United States has a tremendous stake in the future economic and political stability of Hong Kong. We agree and are convinced that the best way to protect that stake is to strengthen ties at all levels with both Hong Kong and China.

I appreciate the opportunity to speak here today. To echo Mr. Wiedemann, we urge you and your colleagues to visit Hong Kong whenever you can—some of your colleagues have been there many times before—and to judge for yourself the current and prospective state of Hong Kong's health.

I would be pleased to answer any questions or respond to any inquiries.

[The prepared statement of Dr. Michelson appears in the appendix.]

Mr. BEREUTER. Thank you very much, Dr. Michelson, and finally, we would like to hear from Ms. Dinah PoKempner. She is the counsel for the Human Rights Watch/Asia. We look forward to your testimony. You may proceed as you wish.

STATEMENT OF MS. DINAH POKEMPNER, COUNSEL, HUMAN RIGHTS WATCH/ASIA

Ms. POKEMPNER. Thank you, Mr. Chairman. I think I am going to perhaps present a slightly less optimistic view than Dr. Michelson. I just want to begin my comments by saying that my impression of the level of confidence expressed by Hong Kong residents, as opposed to foreign investors, is that they are somewhat more trepidatious, but it would be more appropriate for a witness who is actually a Hong Kong resident to go into that in detail, so I will confine my testimony to human rights issues relating to Hong Kong.

Hong Kong today is one of the most economically developed and prosperous locations in Asia, a region whose economic growth is predicted to lead the world in the twenty-first century. It also enjoys one of the best environments in terms of human rights. These two phenomena are integrally related. Hong Kong embodies a society where the rule of law prevails. Its legal system is exemplary in the region, known for its integrity and respect for basic rights. Its civil service is a meritocracy and accountable to the law; its media is among the freest in Asia; its residents enjoy a practically unfettered flow of global information and the freedom to express their own views.

None of these characteristics may survive the transition to Chinese rule after 1997. In 1984, the governments of China and Britain promised that Hong Kong would enjoy a high degree of autonomy after the 1997 transition. That treaty, known as the Joint Declaration, stipulated there would be a Court of Final Appeal to replace the Privy Council as the court of last resort, an elected legislature, continuity of tenure of the present civil service and legal guarantees for fundamental individual liberties. Yet far from reassuring the international community and investors on the success of the upcoming transfer, China has threatened to overturn each one of these obligations.

Hong Kong Governor Chris Patten rejected proposals that would have extended a one-person/one-vote rule to elections of all representatives to the colony's legislature, but even his more modest electoral reforms were condemned by China. The reforms, approved in February and June 1994, lowered the voting age, abolished appointed seats for representative bodies and augmented the number of Legislative Council seats elected by functional constituencies.

Beijing was not subtle in expressing displeasure. Immediately after the reforms were enacted Chinese officials unveiled an electric sign board to count the days remaining until Chinese rule and threatened to dismiss all legislators and reconstitute the three levels of publicly elected government bodies upon the June 30, 1997 handover.

These threats were formalized in a resolution of the Standing Committee of the National People's Congress ordering the dismantling on July 1, 1997 of all elected bodies.

In spite of these threats, Hong Kong successfully held elections for both its district boards and municipal councils under the new electoral reforms. In both elections the Democratic Party, a recent union of pro-democracy politicians, performed strongly, winning be-

tween two and three times as many seats as candidates from the pro-China Democratic Alliance for the Betterment of Hong Kong.

In September of this year Hong Kong voters will cast ballots for the first Legislative Council that will be comprised entirely of elected members, even though only 20 of 60 seats are elected through universal suffrage with the remaining 40 indirectly elected through business and professional constituencies and an electoral college.

The democratic party currently holds 14 out of 18 directly elected seats on the legislative council, and yet China has branded some of its leaders as counter-revolutionaries who should not be allowed public office in the new Hong Kong. Chinese officials refuse to meet with these legislators or the Governor, instead directing their way a steady stream of invective. In retaliation for Governor Patten's first proposing electoral reforms, Beijing established a shadow authority, the Preliminary Working Committee, which will set up the mechanisms to nominate the new chief executive and to appoint a compliant temporary legislature, the latter to be established in 1996.

The Joint Declaration stipulated that Hong Kong would be vested with "independent judicial power including that of final adjudication". A Court of Final Appeal "which may, as required, invite judges from other common law jurisdictions to sit", was to take the place of the Privy Council. This provision had a twofold effect. It would guarantee to Hong Kong an adequate pool of high calibre judges from the entire spectrum of common law jurisdictions, keeping it in touch with the commonwealth's legal developments. It would also be insurance should local judges become subject to political pressure or direction after the transition.

However, in September 1991 the Sino-British Joint Liaison Group announced an agreement whereby only one foreign judge would be able to sit on at most half of the court's sessions. This arrangement was strenuously protested by the Hong Kong bar and rejected by the legislative council on two separate occasions.

On June 9, 1995 Britain and China reached agreement on implementing legislation that would preserve the limit of one foreign judge, delay the establishment of the court until after the 1997 transition and carve out of its jurisdiction "acts of state such as defence, foreign affairs, etc." This legislation, passed yesterday by the Legislative council, threatens to leave Hong Kong with a high court that is severely compromised in its independence, its jurisdiction and the finality of its judgments.

The threat to the court's independence stems not only from the limit of one foreign judge but also from China's decision to disband the legislature that will be elected this September. Should that occur, Beijing's appointed legislature will be called upon to rubber stamp the most basic institutional arrangements for the post-colonial era, including confirming the judges nominated for the court by the chief executive chosen by Beijing. Nor will the Court of Final Appeal be able to establish its authority through precedent before the switch to Chinese rule.

The Court of Final Appeals' jurisdiction is in the hands of the Chief Executive who may issue certificates stating an issue involves an act of state and is therefore unreviewable. Should the Hong Kong courts challenge this judgment, their decision may be

ultimately reviewed by the Standing Committee of the National People's Congress in Beijing under its power to interpret Hong Kong's basic law.

Thus, the finality of judgments from the court of final appeal is also uncertain. It is unlikely that China will adopt the narrow and constrained view of the common law doctrine of acts of state. Issues ranging from commercial disputes with state-owned enterprises to habeas corpus actions could be interpreted in light of national security concerns to involve "acts of state." Such developments would not only threaten human rights but undermine business confidence in Hong Kong.

Having declared its willingness to reconstitute the highest levels of the legislature and judiciary, China is now raising fears it will meddle in the civil service as well. And while I think Anson Chan's visit to Beijing is a positive sign, I don't think that it completely negates the interest of Lu Ping, the director of the Hong Kong and Macao affairs office, in vetting the appointments of senior civil servants by getting their personnel files, details as to their nationality and passports etc., a move that has caused a great deal of unease in the ranks of the civil service.

China's hostility to the guarantees of basic civil and political rights was made plain by its opposition to the 1991 Bill of Rights, and its threats to repeal the legislature after June 30, 1997. The Bill of Rights largely follows the language of the international covenant on civil and political rights, to which Britain is a party and China is not, which by the way, raises the question of whether Britain's reporting responsibilities on Hong Kong to the human rights committee at the United Nations will be assumed by China. China has not yet agreed on this.

The Bill of Rights has already produced some important decisions on civil and political rights and has prompted the Hong Kong government to review colonial-era laws for inconsistencies with its guarantees; however, progress has been slow, and I want to particularly point out that the Emergency Regulations Ordinance still is on the books. This ordinance permits the Governor or the chief executive of Hong Kong in a state of emergency to institute whatever regulations he or she thinks is in the public interest. Although some subsidiary legislation that was enacted under this ordinance has been repealed, the basic ordinance remains there. One journalist described it as taking a gun, not even taking out the bullets but just hanging it up on the wall. It is hanging there.

But the largest obstacle to the implementation of the Bill of Rights has been Governor Patten's refusal to entertain legislative proposals for a human rights commission. Such a commission would be able to provide an alternate form to the courts for investigation of complaints, dispute resolution, public hearings and advice. It could also be a mechanism for issuing reports on the International Covenant on Civil and Political Rights, reviewing legislation for consistency with the Bill of Rights, and it would serve a good educational function as well.

China has opposed legislative proposals for such a commission, threatening that it would be dissolved should it be formed before 1997.

The importance of firm measures to guarantee civil rights is illustrated by the quiet erosion of press freedom in Hong Kong. Self-censorship in the media is an increasingly serious problem, albeit one difficult to document.

The most recent illustration is the South China Morning Post's abrupt cancellation on May 19, 1995 of a popular and politically controversial cartoon strip, "The World of Lily Wong." Although the paper claims its decision was based on financial considerations, it refused to run the balance of the month's installment for which it had paid. Recent strips lambasted China's practice of selling the organs of prisoners it executes. In one frame, a Chinese official assures a nervous observer that there will be no future shortage because "by then, it will be 1997 and we got all the democrats and over a dozen cartoonists!"

The threat to Hong Kong's press is not always so subtle. Xi Yang, a reporter for Ming Pao, still languishes in prison sentenced in 1994 to a 12-year term for espionage regarding state secrets—in this case, a standard business scoop about the Bank of China's plans relating to interest rate movements and the sale of gold. China continues its policy of wooing journalists it considers friendly and excluding those it considers hostile, including denying visas to ten writers who had signed letters of protest over Xi Yang's case.

Beijing has also on two occasions denied visas without explanation to reporters who wish to cover Hong Kong issues in China from the new Hong Kong newspaper, *Apple Daily*. *Apple Daily* is owned by Jimmy Lai, whose magazine, *Next*, criticized Premier Li Peng, I believe, by calling him a turtle's egg.

My recommendations actually, while they are different than those of the other two panelists, are based on exactly the same principle: that it is necessary to engage both China and Great Britain and certainly the Governor of Hong Kong very directly.

My first recommendation is that the most tangible sign of concern and support for civil and political rights by the U.S. Congress is increased contact and exchanges with the people and leaders of Hong Kong, and one opportunity for doing so is the September 1995 Legislative Council elections. The precedent for high-level international monitoring of Hong Kong elections should be established now, and Members of Congress and their staff should support such efforts through appropriate institutions.

The United States government should not lend any support to China's efforts to ostracize or delegitimize duly appointed and elected government representatives in Hong Kong.

Second, Congress should urge China to live up to its treaty obligations and assume the reporting requirement under the International Covenant on Civil and Political Rights, or empower the future Hong Kong government to assume that responsibility. Failure to do so should be considered a serious breach of the Joint Declaration.

Congress should also strongly urge Governor Patten to support the establishment of a human rights commission that can assure that the Bill of Rights will be used to the greatest extent possible by the greatest number of people before 1997. Delay has already compromised the work such a commission could accomplish, but its creation will be an important measure to boost confidence in the

territory's commitment to maintaining a high level of civil and political rights. There have been several independent legislative proposals on things such as an equal opportunity commission. The Governor should be urged to adopt the most expeditious means of establishing an effective commission, and maybe this legislative proposal is a door.

Governor Patten should be strongly urged to permit the introduction of private members' bills on subjects that directly affect human rights in Hong Kong post-1997. It is rather striking that despite the fact Hong Kong is moving toward an elected legislature, the Governor has been unwilling to entertain private legislative bills that affect basic human rights areas. This is something that I think that Congress could express some dismay at and urge the Governor to take all good ideas and let them be fully debated.

Finally, Congress should urge the Hong Kong government to swiftly act to amend, revise or repeal those laws that still present serious human rights problems under the Bill of Rights, and I would name the Official Secret Act as one and the Emergency Regulations Ordinance, which I just described, as the other.

That concludes my testimony.

[The prepared statement of Ms. PoKempner appears in the appendix.]

Mr. BEREUTER. Thank you very much for your testimony and to all three of you for exceptional testimony. Since I had Secretary Wiedemann all to myself on questioning, I am going to turn first to my distinguished ranking member for any questions that he might want to pursue.

Mr. BERMAN. Thank you, Mr. Chairman. Maybe an interesting way to proceed would be to take these last recommendations of things Congress should be doing, and perhaps have Dr. Gong and Dr. Michelson respond to them as which ones you think make sense, where you think there really is no role for us to do anything—we have seen a number of problems pointed out. I notice Dr. Gong and Ms. PoKempner shared a concern about the structure of this court and perhaps just as important the exemption of certain kinds of acts from judicial review, but in terms of what we do about all of that, it might be interesting to—do you have Ms. PoKempner's testimony in front of you? You may not. All right.

Dr. GONG. We took notes on what she was saying.

Mr. BERMAN. OK. I will throw out a couple of questions. What do you think about the idea of international monitoring of the Hong Kong elections in September 1995?

Dr. GONG. This idea works if it is done in the spirit of international interest in an election in Hong Kong, as elsewhere in the world. Hong Kong is not being singled out; and also, that it be done—and this will be very difficult—in a way that does not show favoritism for any of the particular candidates.

Of course, Hong Kong candidates will have to make their own calculations about whether involvement with members of the U.S. Congress is in their political interests or not. It's important that other observers, particularly those in Beijing, not see this as us meddling in their elections or that, frankly, people in Hong Kong do not see it as meddling in a direct political way for certain candidates.

Mr. BERMAN. Let me ask you, why is this—I understand the concern about what is going to happen to this legislature after it is elected, but in a country that everybody's in an area, territory, whatever, everyone acknowledges has deep traditions of common law, an exemplary civil service, why is there any concern about the fairness of the elections? Is there some process here, bureaucratically that is going to take place that is different that would keep the common law from being applied to challenges that would raise doubts about the accuracy of the election?

Dr. GONG. I would be interested in other opinions on this. My sense is that the question is not so much about whether fair play occurs in terms of Hong Kong's elections; no election anywhere in the world is completely without some degree of—

Mr. BERMAN. It is more to sanctify the results of that election, that the people who come out of that election should be the legislative leaders—in a sense, create a momentum in support of that as the ruling legislative body.

Dr. GONG. It is international interest in what takes place there.

Mr. BERMAN. I guess you did not do a lot of election running in Hong Kong.

Ms. POKEMPNER. This is the first completely elected legislature.

Dr. GONG. Can I just finish this other point for 1 second? The principle I was trying to illustrate a moment ago is the difference between an individual Member of Congress who may have a particular interest in an individual candidate versus the U.S. Congress as a body being seen to take the side of any particular candidate; that distinction, I think, is important.

Obviously, on a personal basis a Member of Congress may desire to affiliate in some way with a certain political position in Hong Kong. But I think it important that the U.S. Congress as an institution show its concern, should it choose, with the general process without being seen to espouse the particular interests of individual candidates.

Mr. BERMAN. Maybe this is a role for NED to play.

Dr. MICHELSON. Congressman, if I might comment—and this is a personal opinion because I do not think the American Chamber has really looked at this issue. I think it is certainly important for the Congress to show concern with what is happening in Hong Kong and what is happening politically, but as you suggested, it would be a very tricky business, I think, to get involved with this election; there are not really any real concerns about it being conducted fairly, as you suggested.

Now, there may be ways to do that, and working with the Hong Kong government you might find ways in which the Congress could play a constructive role, as you have already suggested. I think the concerns certainly are true beyond 1997 and individually, certainly, within the Chamber we have the same concerns that have been expressed here before about what legislature is going to be in power and what authority they will have and how they will act. I think many of us are comfortable with the system as it has evolved in Hong Kong now.

Mr. BERMAN. Is concerns the right word, or is it deep serious fear that action will be taken after the legislature is elected which will invalidate that legislature, that this court will veer away from a

stare decisis common law approach toward determining legal disputes, that a massive number of governmental actions will be excluded from any legislative or judicial review and that all the things that make you praise this current atmosphere will then be undermined.

Dr. MICHELSON. Well, if that happens, that will undermine one of the big advantages of Hong Kong, and one that I think the Chinese share in trying to maintain——

Mr. BERMAN. You do not think that will happen.

Dr. MICHELSON. I think it could happen. I just think that at this point we have to work very hard to suggest to everybody concerned, including the Chinese officials, as we are that these would be the consequences; that the consequences of this happening would be very serious. The transition is going to take place, there is going to be a transition to Chinese sovereignty. It is something that we are going to have to adjust to. We are going to—all of us are trying to work to make that as smooth a transition as possible and to maintain the rights and privileges that we hold now.

If those are not maintained and if what you suggest happens, it will have very dire consequences, I think, for Hong Kong and for China in the sense of what China hopes to gain, especially economically from Hong Kong. No one can guarantee it will not happen, but we are working hard that it will not.

Dr. GONG. The dilemma on the so-called through-train question on the Legco, as I understand it, is would you rather have a group which is seen as cooperative with Beijing and allowed to continue, or see a group which is not cooperative with Beijing which, as Beijing has threatened, is not allowed to continue to their full term. That is one of the questions at stake on September 17 in the next Legco elections. No one can calculate exactly how this will play.

Mr. BERMAN. You think each voter is going to be making a sophisticated choice about preferences and outcomes and consequences that——

Dr. GONG. They have to weigh the whole universe of implications and vote their consciences, which is what everyone hopes will occur; but Beijing must realize its stakes in Hong Kong's ongoing stability.

Ms. POKEPNER. I would just like to add to Dr. Gong's comments. I certainly would not want to predict the outcome of the September elections; however, support for the democratic party has been quite strong and if it continues, what we are likely to see is a final couple-year history of confrontation between China and the people of Hong Kong, not necessarily smooth acquiescence and transition; and I think the U.S. Congress has to be prepared for that, that the—the only scenario is not smooth transition. There may be, in fact, a very bumpy, very rocky, painful transition that produces a very ugly scene. That is why we suggested that monitoring of elections start now. This is the first election for the whole legislature. We have to be alert to the possibility that this legislature will be dissolved, an appointed legislature will then be in place to fashion new election laws under which the next Hong Kong legislature will be elected.

At that point it might be very useful to have a precedent of election monitoring in Hong Kong, and I would certainly suggest, echo all of the concerns, that such election monitoring should be done in a way that is not partisan, that is done through appropriate institutions that conduct election monitoring and support services in other countries as well, not some kind of ad hoc or partisan mechanism.

Mr. BEREUTER. May I interrupt just a second. Any specifics about the type of monitoring in terms of the institution? Do you think it ought to be the United Nations?

Ms. POKEMPNER. This is a bit out of our—we are not election monitors, but there are many organizations. The NAD was mentioned, there are international organizations also that monitor elections.

Mr. BERMAN. But you are a China expert, to some extent; you could suggest, perhaps, which is the least offensive, the least offensive to the Chinese.

Ms. POKEMPNER. I am not as much an expert as you may take me for, so I would like to reserve the question. I would be happy to give you an answer later. I think that the presence of, for example, American Members of Congress or legislative aids during the election period, or their participation as observers or other figures that have a connection to the U.S. Government would be sort of a vote of confidence in the whole process, and I would be happy to suggest other institutions later.

Mr. BEREUTER. Well, there is certainly a precedent for that, and we have done it sometimes through the Carter Center and sometimes directly. Dr. Gong.

Dr. GONG. I subscribe to all the concerns you have raised; even the term "monitoring" would need to be used in a very careful way so as not to presume irregularities; what we want to show is long-standing interest, a universal non-partisan interest, such as we have in elections around the world.

Mr. BEREUTER. Thank you, Mr. Berman. I will return it to you as a committee to publicize the glory of the transition election.

Mr. BEREUTER. What about the human rights commission idea? What are your reactions to Human Rights Watch/Asia suggestion in favor of that?

Dr. GONG. Again, in my own view, this involves some of the same concerns raised before. Some would worry that this would be coming a little late—perhaps too little, too late. But these are long-standing concerns, particularly if it were done, again, from a Hong Kong context, in a non-partisan way.

Dr. MICHELSON. My feeling, again, there are various views in the chamber. There are some that certainly support this. I am not sure U.S. Government coming on one side or the other of this issue would be helpful at this point. There may be, again, ways to do it, but there is considerable support within Hong Kong for this and not just among people that are associated with human rights, but a lot of people because the continuation of freedom of expression, freedom of movement and so on are very important to business as well as to other elements of the Hong Kong community and to maintain these is important. Whether a commission is the best way

or not, there is some disagreement, but certainly a lot of people will support that.

I will say in reply to an earlier one—and it is always hard to estimate—given the current state of Sino-U.S. relations, almost anything the U.S. Government does will not be received well by Beijing. It does not mean it should not be done, but you have to calculate that in your judgment on these issues.

Ms. POKEMPNER. I think Beijing has already received it quite poorly. Beijing has opposed the Bill of Rights; it wishes to repeal it. It has threatened to disestablish any such human rights commission. The preliminary working committee loudly condemned even the repeal of the subsidiary legislation under the emergency regulations ordinance. These recommendations are not directed toward Beijing. These recommendations are directed toward Governor Patten who, although he has been supportive of some electoral reforms, has done considerably less in the area of human rights than what there is popular support for in Hong Kong.

Mr. BEREUTER. I think it is a good place to stop the hearing, and as a temporary measure at least and say this has been a very productive session, but I would like to give—since we have ten and a half minutes left we could hear a minute from either and all of the three of you if there are any things that you would like to add at this point on the basis of what has been presented here or any additional thoughts stimulated by our questions.

Dr. Michelson, I will start with you. Is there anything you would like to add for about a minute or more?

Dr. MICHELSON. Well, I would just like to say that the issues that have been raised today, I think, are very important and I think it is important for the U.S. Government and the U.S. Congress to continue to express their concern, but in a positive, constructive way, and I think for the most part that has been done through the U.S./Hong Kong Policy Act and through other ways.

There may be other ways that you can participate, and some of these have been suggested. I think we all have to work together and raise our views strongly with all concerned in this transition, and we are going to certainly continue to do so as American business community, and I can assure you we raise them quite frankly and forthrightly. We never know what kind of impact we have, but we think in some cases it is a positive one to try to make this transition a bit smoother than it might otherwise have been.

Mr. BEREUTER. Thank you. Ms. PoKempner, your very specific suggestions answered a lot of questions that I was prepared to ask you, so I appreciate very much the fact that you have done that, have been very specific and you have given us an opportunity for the panel and the members to react to it as well.

Is there anything you would like to say in conclusion today?

Ms. POKEMPNER. Well, I will make my concluding comment very general, then. I think that there is a danger in adopting a very low profile approach to Hong Kong in the interest of not ruffling China's feathers. China's feathers are pretty ruffled already, and it is likely to be a very prickly, sensitive issue.

However, if the United States—both the administration and the Congress—take a very passive and low profile role on Hong Kong, that will only give the signal that there is not international support

and concern. I do not think that we can only count on China to recognize its self-interest economically in Hong Kong. I think there are many people, many leaders in China who do recognize the economic value in Hong Kong, but may be also swayed by political considerations at any given time.

I think some political policymaking and statement on the part of the United States is necessary to signal where relations with China will fall into more troubled water if Hong Kong matters are not dealt with well.

Mr. BEREUTER. Thank you very much. Dr. Gong, you have the final word.

Dr. GONG. Thank you again for the chance to participate in these important hearings and to return to the three broad areas you had as your line of inquiry—to say I hope these questions continue to be asked.

First, there are specific U.S. interests regarding technology transfer and protection—5K status, protection of certain kinds of technologies. Second, there are broader issues—such as long-standing concerns for human rights, for what happens to 6 million people who live in Hong Kong. Some of these questions are very difficult to weigh. How do we balance commercial versus human rights; where do they converge in practice; and so on. As has been suggested, these are questions that do not have set answers. Continued interest and continual asking of these questions will allow us to answer them, I hope, in a constructive way as we continue forward.

Last, your third area was to put these issues into a larger regional context. It is important to recognize that we are not talking just about Hong Kong, just about Taiwan, or just about Beijing, but these three in combination plus other regional issues, where, again, we have important national interests.

Mr. BEREUTER. Mr. Berman.

Mr. BERMAN. The alliance of Hong Kong, Chinese and the United States have submitted a statement for our subcommittee on the issue of democracy in Hong Kong, and I would ask unanimous consent that the statement be put into the record.

Mr. BEREUTER. Without objections, that will be the order.

[The information appears in the appendix.]

Mr. BEREUTER. We very much appreciate your testimony. Thank you so much for coming. The subcommittee is adjourned.

[Whereupon, at 11:57 a.m., the subcommittee was adjourned.]

APPENDIX

HONG KONG AFTER 1997

Opening Statement Rep. Howard L. Berman

I look forward to the hearing this morning. Next month I will be briefly visiting Hong Kong. Again, I'd like to congratulate Chairman Bereuter for holding a thoughtful hearing on an issue of great interest to the United States.

With passage of the U.S.-Hong Kong Policy Act of 1992, the United States marked its concern that the 1997 transition ensure Hong Kong's unique status. In so doing, we were only reiterating the promises made by China in the Sino-British Joint Declaration governing the 1997 transition.

In the last century the United States acted through its Open Door Policy to protect China's sovereignty. With the Hong Kong Policy Act the Congress moved to protect Hong Kong's autonomy.

However, since that legislation passed, a number of developments in Hong Kong have raised deep apprehension over the commitments made by the Chinese government. China has indicated that it would dismantle all of Hong Kong's democratic institutions after 1997 and has asked to review the personnel files of senior Hong Kong civil servants. American officials have expressed concern over China's commitment to Hong Kong's autonomy.

There have, of course, been some positive signs: agreement to move forward on the new airport construction and recently agreement to establish a Court of Final Appeal -- although it is a Court that may be fatally flawed.

The transition in 1997 is important not just to the citizens of Hong Kong. It will be the most prominent test of China's willingness to abide by its international commitments.

I think it no exaggeration to say that 1997 will be a rite of passage for both Hong Kong and for China: Hong Kong as it abandons colonial status and for China, a major test of its reliability to act responsibly in the international community.

KENT M. WIEDEMANN

Prior to entering the Foreign Service in 1974, Mr. Wiedemann served two years as a Peace Corps Volunteer in Micronesia (Truk), and for three years directed management development and training with various international operations of Hewlett Packard Company. During his diplomatic career to date, Mr. Wiedemann has served as a consul in Poland, international relations officer in Latin American Affairs at the State Department, and was posted twice to the U.S. embassy in Beijing, China and once to the U.S. consulate general in Shanghai. He has also been director of the Office of Chinese Affairs at the State Department, as well as deputy chief of mission at the U.S. embassies in both Singapore and Israel. From 1993-94 Mr. Wiedemann was appointed Special Assistant to the President and Senior Director for Asian Affairs at the National Security Council. Mr. Wiedemann was Deputy Assistant Secretary of Defense for Asian and Pacific Affairs in the Office of the Secretary of Defense for International Security Affairs, 1994-95. He was appointed Deputy Assistant Secretary of State for East Asia and Pacific in May, 1995, and is responsible for China, Taiwan, Hong Kong, Mongolia, Vietnam, Cambodia, Laos, Thailand and Burma.

Mr. Wiedemann was a Diplomat-in-Residence and Senior Fellow at the East-West Center, is a recipient of the State Department's Meritorious Honor Award and Superior Honor Award, and has also been awarded the Medal for Meritorious Civilian Service by the Secretary of Defense.

A native of California, Mr. Wiedemann has a B.A. in History from San Jose State University, and an M.A. in International Relations from the University of Oregon. He is married to the former Janice Lee Weddle, an educator. Together, they have a son, Conrad and currently reside in Great Falls, Virginia, a suburb of Washington, D.C.

Deputy Assistant Secretary Kent Wiedemann

July 27, 1995

House International Relations Committee
Subcommittee on Asia

Hong Kong's Transition to Chinese Sovereignty:
Prospects for 1997

Introduction

Mr. Chairman, thank you for the opportunity to appear before you today to discuss Hong Kong's prospects up to and beyond 1997. This topic is indeed timely, since the territory will revert to Chinese sovereignty in only 700 days. Assistant Secretary Lord, who is accompanying Secretary Christopher to Brunei for the ASEAN talks, has asked that I pass on some observations about his recent visit to Hong Kong. During that visit, Ambassador Lord met with Governor Patten and Chief Secretary Chan, with Amcham, and with local business and political leaders. I would also like to include in the record an important speech on U.S. policy toward Hong Kong delivered on May 2, 1995, by Consul General Richard Mueller.

In a May 20 meeting with Ambassador Lord, Governor Chris Patten expressed appreciation for U.S. policy, calling the Hong Kong Policy Act report delivered to Congress in March a "balanced and sensible" document. Both the Governor and Chief Secretary Chan expressed deep concern, however, over proposed U.S. legislation seeking to reopen the screening process for the 22,000 screened-out Vietnamese asylum seekers in detention camps in Hong Kong. The Hong Kong Government remains concerned that such legislation will be misunderstood by the Vietnamese people in the camps, making repatriation efforts more difficult, and possibly violent. On this point, I would reiterate that the Administration supports the Comprehensive Plan of Action for Indochinese Refugees as the most humane means to resolve the problem of Vietnamese asylum-seekers in camps in Southeast Asia and Hong Kong.

Mr. Chairman, with July 1, 1997 less than two years away, Hong Kong remains the prosperous, dynamic place that has rightly earned its reputation as one of the world's free market bastions. Business confidence remains strong. Although a significant number of Hongkong people left the territory as confidence eroded after the Tiananmen tragedy in China in June 1989, many have returned to Hong Kong in the last few years. Nonetheless, Mr. Chairman, the people of Hong Kong remain concerned about their future. They are concerned not only about practical matters --such as their right to reside in and to return to Hong Kong, or to travel as easily as they do today on documents that are accepted around the world-- but they also have broader concerns about the future of their civil service, their political and legal institutions and, finally, their future prosperity.

My testimony today will focus on these issues. I hope to explain what the United States has been doing in a constructive way to encourage a transition that assures the people of Hong Kong a high degree of autonomy after 1997.

Foundation of U.S. Policy

On July 1, 1997, sovereignty over Hong Kong will transfer from the United Kingdom to the People's Republic of China. The Administration's policy toward this transfer is grounded in a determination to help preserve Hong Kong's stability, prosperity, and way of life. Let me review the basis of that policy. Like previous administrations, the Clinton Administration supports the 1984 Sino-British Joint Declaration and the Hong Kong Basic Law, promulgated by China in 1990. These fundamental documents provide sound principles for the smooth transfer of power, as well as a comprehensive and rational framework for continued stability and prosperity in Hong Kong. The Joint Declaration established the concept of "one country, two systems" for Hong Kong and maintenance of local rule, with a "high degree of autonomy." While China and the U.K. continue to work out specific transitional arrangements, the terms of the Joint Declaration and the Basic Law provide that Hong Kong will be broadly responsible for its own internal and economic affairs, while China will assume responsibility from Britain for Hong Kong's foreign affairs and defense. While granting Hong Kong a high degree of local autonomy, the Joint Declaration and the Basic Law clearly contemplate that, as sovereign, China will have considerable influence in the future Hong Kong Special Administrative Region.

We believe China's best interests are served by faithful implementation of the commitments made in these documents. We hope that China will honor the obligations it has undertaken, making it possible for Hong Kong to continue to be the vibrant, prosperous center it is today while positioning Hong Kong to contribute significantly to a strong, stable, open and prosperous China in the future.

U.S. Interests

U.S. interests in a smooth transfer of sovereignty in Hong Kong are considerable. We have longstanding commercial, cultural, and social ties with Hong Kong. U.S. commercial interests and presence in Hong Kong are an important component of Hong Kong's economic success. With \$12 billion in U.S. investments in Hong Kong, the United States is among the top five foreign investors in the territory. Two-way merchandise trade reached \$21 billion in 1994, \$11 billion of which was in U.S. exports. The largest American Chamber of Commerce outside the United States is in Hong Kong, and more American than British citizens now live in Hong Kong. Indeed, the 34,000 Americans comprise the second largest foreign presence in Hong Kong -- after Filipinos. But our educational exchanges and cultural contacts demonstrate that our interests go beyond the amount of U.S. investment or the size of the American resident population. An estimated 14,000 Hong Kong students are

studying in the U.S. Hong Kong alumni of American universities number in the tens of thousands. We have numerous academic and cultural exchange programs and visits. 90,000 new Hong Kong business and tourist visas were issued in 1994. American media have an established and growing presence in Hong Kong. Many Hong Kong residents maintain homes in the U.S. or have emigrated here, enriching our society and strengthening the bonds of friendship between us.

In addition, frequent contacts between Hong Kong and U.S. officials complement the other aspects of our relationship. In addition to the many members of Congress and congressional staff who visit Hong Kong annually, in the past 12 months there have been visits to Hong Kong by:

- 4 Cabinet-level officials;
- One Supreme Court Justice;
- An Under Secretary of the Treasury;
- 8 Assistant Secretaries of cabinet departments;
- A Federal Maritime Commissioner;
- The Chairman of the Export-Import Bank; and
- numerous other senior USG official visitors involved with various aspects of our multifaceted relationship with Hong Kong.

These strong and enduring bonds reinforce our natural humanitarian concern about the future of the six million people of Hong Kong. We believe it important that the people of Hong Kong not perceive that they will be abandoned or isolated from established relationships after the territory reverts to Chinese sovereignty. The future of Hong Kong people is also linked to the broader U.S. interest in ensuring regional security and stability. Just as a difficult transition would have negative repercussions, a successful transition will reinforce confidence in the continued security and stability of the region.

China's Interests

To assess Hong Kong's prospects, China's interests and stake in Hong Kong must also be examined. Hong Kong has long provided China with an open, capitalist, market-oriented window on the world. In the early 1980s, PRC companies in Hong Kong numbered in the dozens. Today, there are an estimated 5,000 mainland Chinese companies operating in Hong Kong, many of them state-financed. As much as two-thirds of foreign investment in China since 1980 has come through and from Hong Kong. Hong Kong companies are said to employ nearly 4 million people in neighboring Guangdong province alone. Hong Kong serves as a center for training and expertise for aspiring Chinese entrepreneurs and professionals. With one of the best harbors

in the world and state-of-the-art communications, banking, and shipping facilities, Hong Kong has served and will continue to serve not only as a trading entrepot and a favored place to do business, but also as an engine of growth throughout China.

In addition, China expects that resuming sovereignty over Hong Kong in 1997 and Macau in 1999 will serve as a positive example of the possibilities for an eventual reunification of Taiwan with the mainland. Although differing circumstances mark the Hong Kong and Taiwan cases, China has another strong incentive to ensure that Hong Kong's reversion occurs smoothly.

Recent Developments in Sino-British Relations on Hong Kong

A significant development occurred last month, on June 9, when British and Chinese negotiators reached agreement on establishing the Court of Final Appeal. Let me take a moment to explain the importance of this agreement. According to Hong Kong's attorney general, "few issues...are of more importance to our legal system and to the rule of law than the establishment of the Court of Final Appeal." The Court, which will replace the current system of appeal to the Privy Council in London, is stipulated in both the Joint Declaration and the Basic Law. In 1991, the Sino-British Joint Liaison Group (JLG) decided how many members would sit on the Court and the number of foreign judges to be admitted. Opposition and debate in the Legislative Council complicated the implementation of this agreement. When the draft implementing legislation was subsequently tabled in the JLG in 1993, an impasse developed -- one which was widely attributed to the rift in Sino-British relations at that time.

The prospect of failing to reach agreement on transition arrangements for this key facet of the post-1997 judicial system deeply concerned the people of Hong Kong and the international business community. Thus, when the U.K. and China reached agreement on June 9 to establish the Court as of July 1, 1997, under ground rules to be approved by the current Legislative Council, the pact gained widespread support in Hong Kong. The international community also strongly supported the agreement. Fourteen international chambers of commerce and business councils, including the American Chamber of Commerce, joined in expressing strong support for the agreement and urging legislative approval of the implementing arrangements.

Some members of the Legislative Council continue to oppose the agreement on the Court of Final Appeal. Opponents appear to be in the minority, however: the majority of LEGCO members side with public opinion that this agreement is better in every respect than having no agreement, as it avoids the unsettling prospect of a judicial vacuum after 1997. Although many would have preferred to have the Court of Final Appeal established

before 1997, we believe it noteworthy that China has agreed to the ground rules for establishing the Court. Moreover, both sides have pledged to work cooperatively before the 1997 transition to ensure the orderly establishment of the Court.

Most Hong Kong people, and many in the international community, welcomed this agreement as auguring well for broader Sino-British cooperation on other key Hong Kong transition issues. Indeed, shortly after the Court of Final appeal accord, both sides reached agreement on long-stalled financing arrangements for the new airport. There are also encouraging signs that negotiations on other difficult transition issues may soon be reopened.

Progress on Other Transition Arrangements

Mr. Chairman, the Joint Liaison Group has also made progress on other transition issues, with recent agreements on:

- ensuring that international agreements will continue to apply to Hong Kong after 1997;
- replacing U.K. metropolitan law with Hong Kong law;
- translating and modifying the existing Hong Kong Code;
- and strengthening links between Hong Kong and Chinese legal authorities.

The JLG has also made considerable progress on treaties, agreements and legal issues. Of the 200 multilateral agreements extended by the UK to Hong Kong, agreement has been reached on the continued application of 150 agreements. The JLG has approved Hong Kong's continued participation in 30 international organizations. The JLG has also made progress on approval of bilateral agreements between Hong Kong and other governments.

The United States and Hong Kong are currently negotiating or discussing various treaties and agreements. From our perspective, among the most important are the extradition agreement, a mutual legal assistance agreement, an air services agreement, and a bilateral investment treaty.

As a dependent territory of the United Kingdom, certain U.K. laws have been extended to Hong Kong. With China's agreement, a program of "localization" of these laws --separately establishing in Hong Kong law those laws that Hong Kong needs to retain after the transition-- has successfully taken place.

Of some 300 laws in this category:

- Half are no longer required and will lapse;
- 35 have been localized; and
- 32 have been agreed upon and are pending introduction into the Legislative Council. China has an additional 68 laws under study.

Finally, a massive translation exercise under way for several years is nearing an end. When the project is completed, all Hong Kong laws will be written in Chinese as well as English.

In 1988, the China Law Unit (CLU) was established under the auspices of the Hong Kong Attorney General. The unit promotes understanding and exchanges with China's legal practitioners and is building a comprehensive database on Chinese law. The strong relationship developed between CLU and Chinese counterpart organizations has resulted in contacts with other legal institutions and agencies in China. Common interests have led to exchange visits between officials of the Chinese Ministry of Justice and Hong Kong government lawyers. Additional exchanges are envisioned between judges, law faculties and law firms.

Areas of Concern

Mr. Chairman, as positive as the developments are that I have outlined, uncertainties remain about Hong Kong's future. Many Hong Kong people and friends of Hong Kong outside the territory have concerns about stability in government structures, including the Civil Service and the Legislative Council. We believe that Hong Kong's 180,000-strong Civil Service will be an important factor in ensuring a stable transition. China has assured civil servants that they will continue in their jobs after 1997, but changes may be made in the senior Civil Service after the government of the new Special Administrative Region takes office.

During an unprecedented meeting with Chinese officials in Beijing earlier this month, Chief Secretary Anson Chan returned to Hong Kong with similar assurances. China's request to review the personnel files of certain senior civil servants has caused concern. And although large numbers of civil servants have not left the ranks yet, some Hong Kong people are concerned that political uncertainties could result in unusually high rates of turnover in some departments before 1997. Finally, progress in "localization" --the process of replacing expatriate civil servants with Hong Kong employees-- has been good at the senior level, but slower in some key departments such as the police and legal departments.

Many Hong Kong people are deeply concerned about the future of the Legislative Council. Because of disputes over electoral reforms enacted in 1994, China has announced that, after the reversion of sovereignty in 1997, it will disband the Legislative Council to be selected in September 1995. China may thereafter establish a provisional legislature until new elections are held under unspecified rules. The United States views the dispute over the electoral reforms with concern and regret, because we believe stable governing structures are essential to a smooth transition and to Hong Kong's prospects for continuing prosperity. In the Joint Declaration and the Basic Law, China declared its intent to have the people of Hong Kong govern themselves, an undertaking which includes a freely-elected legislature. Consonant with these solemn obligations, we hope that China will support the goal of a smooth transition and the maximum degree of continuity by permitting those elected in 1995 to serve their full terms.

Although the agreement establishing the Court of Final Appeal has helped to dispel uncertainty over legal aspects of the transition, agreement has not yet been reached on another important aspect of the legal structure -- the adaptation of current Hong Kong laws to the post-1997 period. Some 1,000 legal items and 600 ordinances need to be adapted to be consonant with the post-1997 Basic Law. Although many of the necessary changes are minor, such as dropping reference to the Crown, others are substantive and more difficult. Certain transitional issues, such as the continued right of abode and travel documents/visa arrangements after 1997 have yet to be resolved. We have urged both sides to intensify their efforts on these issues to avoid needless uncertainty after the transfer of sovereignty.

 Conclusion

Hong Kong's reversion to Chinese sovereignty is a work in progress. The final 700 days of British rule will be an important and sensitive time. In addition to the uneven progress in negotiations between the U.K. and China, concerns have arisen over a softening economy and rising unemployment in Hong Kong. China itself is undergoing an enormous economic and political transition. In this context, the United States has undertaken a wide range of actions to support a stable transition. Our goal is to cooperate with China, the U.K. and Hong Kong, in fostering a confident, prosperous and highly-autonomous Hong Kong after 1997.

Mr. Chairman and members of the Committee, with your help, we will continue these efforts through the 1997 transition. We encourage visits by members of Congress and staff to Hong Kong, to complement the Administration's continuing

program of high-level visits. We intend to proceed to negotiate and conclude important bilateral agreements relating to our continuing close, cooperative relationship with Hong Kong. Of course, we will support Hong Kong's membership in the WTO, APEC, and other international organizations.

In sum, the Administration -- together with the American business communities in Hong Kong and in China -- believes that the United States government can be most effective by encouraging the governments directly involved in the reversion process to intensify their efforts. We intend to make clear that we have a substantial stake and interest in Hong Kong's future, and we will work vigorously to bolster local and international confidence in Hong Kong. The United States does not seek to interfere in issues properly the responsibility of other governments, because we understand that outside interference could destabilize the process. But we will continue to discuss transition issues regularly with both the United Kingdom and China, seeking to ensure maximum flexibility and a continuing focus on the interests of the people of Hong Kong and the many Americans who do business there.

Substantial uncertainties remain in the transfer of sovereignty over Hong Kong from the United Kingdom, a nation with an open society and a well-developed legal system which protects individual and property rights, to China, a nation now undergoing a process of rapid and unpredictable change and just beginning to develop modern legal institutions. Chinese leaders say that China shares the goals of the United States and other friends of Hong Kong in the international community: stability, prosperity, and predictability. An important aspect of the Administration's policy of comprehensive engagement with China is to cooperate with Beijing in achieving these goals. In addition, U.S. policy envisions a strong, stable, prosperous and open China -- the best guarantor in the long term of Hong Kong's future as a Special Administrative Region of China.

July 27, 1995

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Professional Experience

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 Director, Asian Studies Program, CSIS, Washington, D.C.; August 1989 to present
 Special Assistant to Ambassador James R. Lilley and Ambassador Winston Lord, U.S. Embassy to the People's Republic of China; June 1987-July 1989
 Foreign Service Institute, Chinese Language and Area Studies School, Taipei, Taiwan; November 1986-June 1987
 Special Assistant to Michael H. Armacost, Under Secretary of State for Political Affairs; January 1985 to November 1986
 Assistant for International Affairs to Richard B. Wirthlin; 1983-1984
 Fellow in Sino-Soviet Studies, Georgetown Center for Strategic and International Studies; 1981-1983
 Professorial Lecturer, Johns Hopkins School of Advanced International Studies (SAIS); 1984-1986
 Research Faculty, Oxford University; 1980-1981
 Professional Associate, East-West Center, Honolulu, Hawaii; 1978-1979
 Scientific Look at Life project, in conjunction with NASA, Lockheed Corporation, San Jose State University; 1975
 Reference Pattern Methodology project, San Jose University; 1973

Education

Oxford University Oxford, England	Ph.D. in International Relations M.Phil in International Relations
Brigham Young University Provo, Utah	B.A. (<i>summa cum laude</i>) Valedictory Address University Scholar
Cubberley Senior High School Palo Alto, California	GPA 4.0 on scale of 4 Commencement Address

Major Awards and Honors

Rhodes Scholar
 Marshall Scholar-elect
 Joseph Fielding Smith Scholar
 Outstanding Young Men of America
 Who's Who in American Colleges and Universities
 Soroptimist Youth Citizenship Award (Southwestern region)
 Elks' Club Leadership Award (California-Hawaii region)
 Eagle Scout, Bronze Palm, Palo Alto District Scout of the Year

Professional Travel and Language Proficiency

Executive Officer, Official Visit of President George Bush, 1989; Advisor to Chief Justice Warren E. Burger, 1981; Executive Assistant to Senior CSIS Delegation, 1984 (including Zbigniew Brzezinski, Melvin Laird, Amos Jordan). East and Southeast Asia, former Soviet Union, Europe, Canada, Mexico.
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Affiliations

Council on Foreign Relations
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Hobbies and Interests

Creative writing. Pieces of writing performed include "The Cradle Bridge" (short play); "Einstein, Energy and Love" (readers' theater); "We Are Waiting: The Impact of Chinese Ancestor Worship" (multi-media presentation). Other published writing includes "America the Beautiful Country" (Century 11, reprinted in *JADE Magazine*); "Impressions of Oxford" *American Oxonian*.

Photography (primarily 35 mm, published in *Argo Magazine*). Sports.

Recent Publications

- "A Cross-Strait Summit? Some Observations from Washington," (Taipei, Taiwan: *China Times*, January 16, 1995).
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Hong Kong after 1997

Testimony of Dr. Gerrit W. Gong*
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before the

Subcommittee on East Asian and Pacific Affairs
 House Committee on International Relations

July 27, 1995

Introduction

Earlier this month on July 3, the day before our country's birthday, I was privileged to call on the Honorable Sir Ti Liang Yang, the Chief Justice of the Supreme Court in Hong Kong.

He suggested Hong Kong is Hong Kong because of three main factors: Hong Kong's industrious and highly-skilled people working within a free-market system; Hong Kong's competent and efficient civil service; and Hong Kong's legal structure and system.

Each of these three factors individually contributes to making Hong Kong unique; collectively, all three form a prerequisite for Hong Kong's success.

Let me divide my comments today into two broad sections: first, let me say something briefly on recent developments in each of these three areas (legal system, civil service, and general economic environment); second, let me note five broader points concerning Hong Kong's transition up to and beyond 1997.

* A Rhodes Scholar with Masters and Ph.D. degrees in International Relations from Oxford University, Dr. Gerrit Gong has lectured and researched on the faculties of Oxford, Georgetown, and Johns Hopkins (SAIS) universities. His State Department assignments included serving in the office of the Under Secretary for Political Affairs in Washington, D.C., at the American Institute in Taiwan (AIT), and as Special Assistant to two U.S. Ambassadors at the American Embassy in Beijing.

Because, as an independent research institution, CSIS does not take specific public policy positions, the views expressed herein are those of the speaker only.

I. Current Developments

First, Hong Kong's legal system, civil service, and economic environment.

Hong Kong's Legal System

The common law system has been one of the key factors in Hong Kong's success. In the run-up to Chinese sovereignty, a major effort is under way to assure the continuation of the rule of law after July 1, 1997. The Sino-British agreement of June 9, 1995 concerning a Court of Final Appeal -- just approved by Hong Kong's Legislative Council in a 38-17 vote -- was a compromise that symbolizes the importance and contentious nature of legal reform. While allowing for a Court of Final Appeal in post-1997 Hong Kong, the court will have just one rather than up to five foreign judges able to serve on its panel -- a blow to those who view expatriate judges as serving the development of the common law in Hong Kong.

Hong Kong faces tremendous challenges in ensuring that the rule of law continues following June 30, 1997. The agreement on a Court of Final Appeal is important, but so is the localization of British law, and the maintenance of the common law system, including legal and judicial exchange. It is clear that countries which have kept a viable common law tradition have done so through an ongoing, living association with an always-evolving common law practice and interpretation.

The underlying concern in the ongoing legal reform is the potential politicization of the legal system after the transition, where Hong Kong judicial rulings could be overturned or interfered with by China's political leaders. For example, under the Basic Law the ultimate interpretive authority in cases of "executive acts" (which may refer to acts of state) resides not with a Hong Kong court, but with the Standing Committee of the National People's Congress in Beijing. Such extra-judicial intervention would seriously undermine international confidence in Hong Kong's commercial system and affect the faith of Hong Kong people in the integrity of their own legal system in civil and commercial matters.

Hong Kong's Civil Service

Regarding Hong Kong's civil service, a major positive development is represented by the June 30-July 3 visit of Hong Kong's Chief Secretary Anson Chan to Beijing, opening channels of direct communication on civil service issues.

Chief Secretary Anson Chan faces a dilemma. As the senior civil service representative in Hong Kong she works closely with Governor Chris Patten (and his political agenda). At the same time, she and other key members of the Hong Kong civil service want

Beijing to know they are, in Hong Kong's interest, able and willing to continue service after 1997 working closely with Hong Kong's new chief executive.

It remains to be seen whether or not the Hong Kong civil service feels confident that issues of pensions, civil service personnel files, and other related matters are completely resolved before the transition. Yet, for now, Beijing's new willingness to meet with Anson Chan is clearly a positive signal of Beijing's interest in promoting confidence in Hong Kong's civil service.

Hong Kong's Economic Climate

Regarding Hong Kong's general economic climate, the June 30 Sino-British Joint Communique for the establishment of the new airport and its railway at Chek Lap Kok illustrates China's recognition of Hong Kong's economic prominence.

Hong Kong itself is reinforcing this view by competing aggressively with regional neighbors in the area of infrastructure development. Examples include expanding the telecommunications market, modernizing port cargo facilities, and constructing the new airport and related infrastructure.

The new airport and port cargo facilities serve as opportunities to enhance Hong Kong's position as a leading center for trade, finance, and tourism -- and as a key gateway to China. More importantly, the new airport strengthens Hong Kong's international commercial relationships.

The dual nature of Hong Kong's economic role -- regional and international -- reinforces the stability of its present economic environment. Because Hong Kong is a regional and international commercial center, it is especially in China's interest to preserve Hong Kong's economic and commercial vitality prior to and after 1997.

Broader Issues

In addition to these comments on the importance of the rule of law and civil service to Hong Kong, I would like to note six additional points regarding Hong Kong's ongoing transition.

First, as Hong Kong's sovereignty shifts to the PRC, China's leaders, both the current generation and the next, whether in Beijing or in provincial governments, have an opportunity to welcome Hong Kong's achievements as China's own. For China, this transition represents the fruition of national interest and the honoring of international commitments.

Second, no country, including the United States, can mandate conditions in Hong Kong prior to or after 1997. Our ties to Hong

Kong must ultimately be reflected in the Hong Kong-Beijing relationship.

We best promote our interests in Hong Kong by strengthening Washington-Beijing relations, even while maintaining direct ties with Hong Kong. This requires that a consensus framework for U.S.-China relations be developed.

The economic fundamentals -- continued PRC growth with moderated inflation in a controlled soft landing, and solid Hong Kong growth with carefully monitored inflation and unemployment -- are essential to Hong Kong's continued success and should be reflected in U.S. policy towards both Hong Kong and China.

Third, the United States-Hong Kong Policy Act of 1992 specifies that yearly reports on conditions in Hong Kong of interest to the United States be submitted. Given the possibilities for unexpected developments in Hong Kong prior to and after 1997, such reports should include the conduct of legislative elections, the election and accountability of the chief executive, treatment of political parties, independence of the judiciary, and other key indicators.

The intent of such attention is not to create controversy, nor is it to shy from real differences of views. Rather, the intent of such attention is to signal to Hong Kong's people that they play an important and valued role in the international community and to affirm U.S. interest in Hong Kong's future.

Fourth, the intertwining of U.S. and Hong Kong personal and professional ties should continue, both quantitatively and qualitatively. Such exchanges should include additional, substantive dialogue between members of the U.S. Congress, senior U.S. administration officials, media representatives, and academic and policy community experts.

It should broaden and deepen artistic, educational, and cultural exchanges, as well as other interchanges that foster meaningful, personal, and institutional involvement.

Hong Kong's evolving regional role; its outlook and input regarding Asia-Pacific investment, trade, and financial flow; and its potential contributions to positive U.S.-PRC economic relations are but a few of a long list of topics ripe for deepened U.S.-Hong Kong exchange.

Fifth, while it is right to be concerned about possible inconsistencies between the Joint Declaration and Basic Law, we must be circumspect in challenging their imperfections, either in conception or implementation, should such challenges undermine the very existing transitional framework they are intended to provide.

Sixth, the United States should be mindful of other transition issues outside of the commercial and legal realms that also affect the lives of six million Hong Kong people: among these, the right of abode, abolition of visas, the integrity of the Bill of Rights, the PRC's plan to dissolve the Legislative Council, the freedom of the press, and the measures adopted to stem corruption.

Finally, the United States should proceed with negotiating important accords with Hong Kong: an extradition treaty, a bilateral trade treaty, and a mutual legal assistance agreement. These agreements help to preserve Hong Kong's international standing and further U.S. interests there.

Conclusion

The essential issue in the upcoming months prior to July 1, 1997 is whether Britain and the PRC can be mutually accommodating without impinging on Hong Kong's abilities to maintain its uniqueness within a new sovereign framework. To assist Hong Kong in this transition, it is in the U.S. interest to develop a genuinely constructive and productive relationship with China, which in the end will best allow Hong Kong to remain Hong Kong.



THE AMERICAN
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MARK MICHELSON, Ph.D

Vice Chairman, American Chamber of Commerce

Dr. Michelson is managing director of Warren Williams International Limited, a leading public affairs consultancy in the Asia Pacific. He assists companies and other business organizations in situations in which government behavior affects the client's interest or objectives.

He is a frequent speaker on regional economic and political issues at conferences and seminars, including in 1992, the Pacific Rim Forum in San Diego and the Asia 2010 Conference organized by the Australian Chamber of Manufacturers and Austrade.

Dr. Michelson has spent the past twenty years working in the Asia Pacific region. Arriving in Hong Kong in 1980 with Business International, Dr. Michelson served as a senior consultant to international companies on trade, investment, economics, politics and other issues affecting business operations.

He organized and directed numerous business forums and client programs including government round tables in Korea and Taiwan and the annual Heads of Asia Pacific Operations Roundtable. He also established the Hong Kong Regional Managers Club and the Japan Business Group. He has written numerous articles on Asian business issues for international publications including the Asian Wall Street Journal and the International Herald Tribune.

Prior to joining Business International, Dr. Michelson organized and supervised executive development programs for Japanese, Korean, and American executives and taught East Asian studies and business courses. Dr. Michelson is vice chairman and member of the Board of Governors of the American Chamber of Commerce in Hong Kong and serves on the General Committee and as chairman of the Finance Sub-committee of the Hong Kong Country Club.

Dr. Michelson earned his BA from Carleton College and doctorate from the University of Illinois. He also attended Harvard University, the University of Tokyo, and the New York University Graduate School of Business. For his academic achievements, he was awarded a Fulbright Fellowship, funded by the U.S. Government, to do research in Japan.

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August 1995



THE AMERICAN
CHAMBER OF COMMERCE
IN HONG KONG

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Mark C. Michelson

1994 Vice Chairman

**American Chamber of Commerce
in Hong Kong**

to the

House International Relations Committee
Subcommittee on Asia and the Pacific

Washington, D.C.

July 27, 1995



THE AMERICAN
CHAMBER OF COMMERCE
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HONG KONG IN TRANSITION: CHALLENGES AND PROSPECTS

Mr. Chairman, Senators: It is an honor to have the opportunity to testify on an issue of great importance to the American community in Hong Kong, as well as to the economic and strategic interests of the United States.

In less than 24 months, sovereignty over Hong Kong - one of the world's most freewheeling capitalist markets and a bastion of free trade - will revert to China. At midnight on June 30, 1997, Hong Kong will become a Special Administrative Region of the People's Republic of China - marking the end of 155 years of colonial rule. I am pleased to offer a perspective from the American Chamber of Commerce in Hong Kong on the territory's transition to Chinese sovereignty, implications for the United States and prospects for the post-1997 era.

Background

Over the past two decades, Hong Kong has emerged as a major economic powerhouse, earning a well-deserved position as one of the four "tigers" of Asia. Hong Kong's economic dynamism and resilience is legendary. A tiny spec of territory ranking 89th in terms of population, Hong Kong is today the world's 8th largest trading economy. Hong Kong operates the world's largest container port and second busiest airport in terms of cargo. Per capita income of over US\$21,000 on a purchasing parity basis exceeds that of countries such as Britain, France, Canada and Australia. Gross Domestic Product grew by 5.5 percent in 1994, following increases of 5.8 percent in 1993 and 6.2 percent in 1992. The GDP forecast for 1995 is about 5 percent.

With over 500 financial institutions from 43 countries, including 85 of the world's top 100 banks, Hong Kong is a leading international financial center. Funds under management by Hong Kong financial institutions are estimated to exceed US\$120 billion. The Hong Kong stock market is one of the busiest (and most volatile) in the region. At the end of 1994, Hong Kong's stock market was the world's eighth largest and the second largest in Asia. More than 500 companies were listed on the Stock Exchange of Hong Kong, with market capitalization of approximately US\$270 billion. The territory is the preferred base for regional business. Over 700 international companies maintain regional headquarters in Hong Kong. A major attraction is the fact that Hong Kong is at the heart of the Asian economic miracle, the gateway to China, and equidistant from North and South Asia.

The Heritage Foundation's *Index of Economic Freedom* ranks Hong Kong as having the freest economy and *Fortune* magazine recently honored Hong Kong as the best city in the world for business. According to Interpol, the territory is one of the safest cities in the world. Although the crime rate increased slightly in 1994, violent crime fell for the third year in succession. The Hong Kong Government notes that improved co-operation with the Chinese authorities has led to a sharp reduction in cross-border crime and the elimination of major armed gangs with mainland connections. The Independent Commission Against Corruption (ICAC) continues to be an effective force in battling corruption.

U.S. Presence in Hong Kong

The United States maintains a strong presence in Hong Kong. Americans are the largest foreign business community, with over 31,000 U.S. passport holders living in the territory. Approximately 1,000 U.S. companies are located in Hong Kong. Total cumulative U.S. direct investment in Hong Kong is estimated at US\$10.5 billion on an historic cost basis. Hong Kong is the U.S.'s 13th largest trading partner and 11th largest market for U.S. exports. The U.S. is Hong Kong's second largest trading partner, after China. Total trade between Hong Kong and the United States in 1994 was \$21.1 billion, with a \$1.7 billion surplus in favor of the U.S. Hong Kong is an important entrepot for trade between the U.S. and China, handling 68 percent of China's exports to the U.S. and 32 percent of U.S. exports to China. The U.S. financial industry maintains a very large presence in Hong Kong. As of the end of 1994, there were 14 licensed U.S. banks with assets of over US\$39.6 billion. In addition, the U.S. has 21 licensed insurance companies in Hong Kong.

Over 10,000 students from Hong Kong study in U.S. universities and an estimated 60,000 Chinese working in Hong Kong hold degrees from American universities. American tourists who visited the territory last year totalled 776,039. Hong Kong is a major rest and recreation center for the American naval fleet. The American presence has contributed substantially - not only to Hong Kong's economic success - but to Hong Kong's way of life. (Witness the proliferation of American-style fast food restaurants.) The U.S. - Hong Kong relationship is rooted on a solid foundation based on shared values and a commitment to the principles of free enterprise.

Americans play an important role in Hong Kong (and across the border in China) as a catalyst for positive social change by promoting western management styles, worker welfare and safety, environmental responsibility, and good business ethics. American firms are generally perceived as the preferred employers in Hong Kong and particularly in China. The Universal Business Principles adopted by the American Chamber of Commerce in Hong Kong represent a model for business to follow.

Our chamber was an active participant in the establishment of the Hong Kong Ethics Development Centre and the AmCham President serves on an ethics advisory committee. Over 1,000 business organizations and companies have adopted Codes of Conduct in the one year since the campaign was inaugurated in May 1994. Our Chamber also assisted with the establishment of The Hong Kong America Center and continue to support its operation. The Center's mission is to promote mutual understanding between the people of Hong Kong and the United States, as well as the development of American Studies at tertiary institutions in Hong Kong. U.S. law enforcement agencies report excellent cooperation from Hong Kong Government agencies concerned with local and regional issues including terrorist activity, criminal and drug enforcement, customs enforcement including intellectual property rights violations, and illegal immigration.

The U.S. presence in Hong Kong is widely perceived by the Hong Kong populace as the predominant foreign presence in the run-up to and post-1997. So closely is the U.S. presence followed, that the American Chamber of Commerce is besieged by telephone inquiries from local media each and every time an apparent problem or setback in U.S.-China relations occurs. Any perceived decline in U.S. - China relations is considered potentially debilitating to confidence in Hong Kong's future, and thus should be viewed with extreme concern.

Hong Kong - China Economic Integration

The economies of Hong Kong and China have become increasingly interdependent. At present, China is Hong Kong's largest trading partner and Hong Kong is China's second largest trading partner after Japan. In 1994, two-way trade grew 15 percent. Hong Kong is the largest external investor in China, accounting for about two-thirds of overall foreign direct investment. Estimates place the total committed investment from Hong Kong at year-end 1994 at US\$60 billion. Hong Kong companies employ more than three million workers in neighbouring Guangdong Province. This is more than six times the size of Hong Kong's own manufacturing workforce. China's investment in Hong Kong is estimated at US\$25 billion.

Given this scenario of highly integrated economic development, it is understandable that most Hong Kong people see their future as inextricably linked to China's economic and political growth and stability. Likewise, China's leaders see Hong Kong as a major catalyst for their ambitious economic development plans - despite ambitions to develop Shanghai and other coastal cities into international trade and financial centers.

Given China's insatiable appetite for investment capital and technology in order to achieve her goals of modernization, Hong Kong's importance cannot be underestimated; nor can the continuing role of American business interests.

The Sino-British Joint Declaration

The Joint Declaration, signed in 1984, lays the foundation for the post-1997 period under the conceptual framework of "one country, two systems" and a commitment to continuity for 50 years beyond 1997. A key element of the declaration is that Hong Kong, as a Special Administrative Region (SAR), will have a high degree of autonomy except in matters relating to foreign affairs and defense. The agreement states that the people of Hong Kong will continue to enjoy their rights and freedoms under Hong Kong law and guarantees the continuation of Hong Kong's existing capitalist economic and trade systems, the free movement of goods and capital, and status as a free port and separate customs territory with its own customs border. There will be no exchange control and the Hong Kong dollar will continue to be fully convertible. The agreement makes provision for granting of new leases extending until 2047. (The Director of the Hong Kong and Macao Affairs Office recently confirmed that leases extended by the SAR Government can be extended beyond 2047). The Joint Declaration also provides for the continuing right of free entry to and departure from Hong Kong. It sets out the criteria for the right of abode in the SAR and the issue and use of passports and other travel documents.

Key problems with the Joint Declaration include the ambiguity of certain parts, including lack of a precise definition of a "high degree of autonomy" and the difficulty of interpretation that is bound to occur.

The Basic Law

According to the Joint Declaration, the policies of the People's Republic of China regarding Hong Kong are to be stipulated in a Basic Law of the SAR enacted by the Chinese National People's Congress (NPC). The drafting of the Basic Law began in 1985 when the NPC appointed the Basic Law Drafting Committee (BLDC) comprising over 50 mainland and

Hong Kong members. The Basic Law Consultative Committee (BLCC), consisting exclusively of Hong Kong membership, was set up to canvass the views of the people of Hong Kong. Following several drafts, the final document was endorsed by the BLDC and subsequently promulgated by the NPC in 1990. The Basic Law will be put into effect as of July 1, 1997.

Black Saturday

An American journalist once said that Hong Kong was a roller coaster of hope and despair. This statement was made in the early 80's as the perception that Sino-British talks were deadlocked, culminated in the near collapse of the Hong Kong dollar on September 24, 1983; due mainly to rampant speculation on the currency. The ensuing panic resulted in mini-runs on banks and deposit taking companies. Groceries were stripped from stores and markets by people anxious that the local currency would be worthless by the following Monday. Physical gold sold at a 20 percent premium to the international bullion price due to panic buying. The Hong Kong economy was nearly brought to its knees. Subsequently, the Hong Kong dollar was linked to the U.S. dollar and anxiety abated. In the aftermath, a majority of analysts concluded the confidence crisis was wholly unwarranted. This episode, later labelled "Black Saturday" illustrates how external forces - in this case rampant speculation by international banks and to some extent misleading media coverage - can potentially destabilize Hong Kong.

Current Environment

The current environment in Hong Kong can be characterized as an atmosphere of both optimism and anxiety. Optimists, including many local and international business groups, confidently expect Hong Kong to continue as an economic dynamo; a major regional center for business and finance and entrepot for China. Individuals and political groups fear contamination by a repressive system that will be intolerant of dissent and any form of democratic representation. They mistrust the intentions and sincerity of the Chinese leadership. Moderates take the middle road and anticipate the establishment of a stable yet cautious relationship between the SAR and China.

Although the future is clouded by uncertainty, the majority of American Chamber members remain cautiously optimistic about prospects. AmCham conducts an annual survey to determine the confidence levels of our members. For each of the first four years since Tiananmen, Chamber members expressed an increasingly positive outlook for both Hong Kong and China. Last year, however, the confidence barometer declined slightly. Nevertheless, 81 percent of the respondents indicated either a very favorable or favorable outlook for the next five years. Of those who expressed an unfavorable view, nearly all cited the increasing cost of doing business in Hong Kong as the major reason. The Sino-British dispute over the future political direction of Hong Kong was very low on the list of concerns. Interestingly, confidence in the business outlook for China was even higher with 94 percent expressing a favorable or very favorable opinion.

The Chamber has not yet conducted the 1995 survey. It is anticipated that views this year will be mixed and the overall business confidence level may decline slightly, due mainly to the lack of resolution of some issues that need to be decided prior to July 1, 1997. Nevertheless, major international companies are taking a long term view of both Hong Kong and China. Indeed, if corporate management is willing to commit major capital investments

in China, it is highly unlikely they are going to be concerned about Hong Kong post-1997. Anxiety about the future is more likely to be found among small entrepreneurs who have personal assets at risk. Ironically, many ethnic Chinese who left the territory in droves in the 1980's are returning to Hong Kong (with their foreign passport in hand) resulting in a reverse "brain drain".

Hong Kong - PRC Political Integration

The way forward for Hong Kong's political re-integration into China is paved with uncertainty, and yet principal local and foreign business interests remain cautiously optimistic about the future. This paradox requires an examination with an aim to develop ideas about a realistic and effective U.S. policy response to the evolving situation.

First, we as Americans tend to underestimate the degree of emotion which characterized the ordinary Chinese person's view of the more than 150 years of the colonial era. For many, if not most, it is synonymous with the national humiliation and degradation at the hands of militarily and economically strong Western powers. Fortunately, Americans are seen as fairly benevolent in contrast to some other countries.

In Hong Kong, there is widespread cynicism about the real intentions and agenda of the British colonial rulers in the final days of the transition. Paradoxically, there is also concern that Hong Kong will become a de facto colonial outpost of PRC interests, with less autonomy than hoped and agreed. Yet this possibility tends to be accepted as a more viable future than any realistic alternative.

In China, there is deep suspicion of British intentions, which were exponentially exacerbated after the Tiananmen incident, when Hong Kong and foreign interests actively used Hong Kong as a conduit for channelling support to dissidents in China and for assisting leading dissidents to escape from China to Western countries.

Insofar as Tiananmen provoked fears about the Chinese regime's legitimacy, Hong Kong was identified as a new source of potentially destabilizing political influence. From being a major re-exporter of Chinese goods, some in Hong Kong sought to become a re-exporter of Western political values, deemed threatening and unacceptable by the Chinese leadership.

Moreover, British and American interests were for the first time perceived as conspiring to overthrow the Communist regime in China, and keep China on the sidelines of world influence. This view, once held only by the ruling regime in Beijing, is now fairly widely held among opinion-leaders in China, inside and outside the Communist Party. It has also been given credence by some leading Southeast Asian political leaders.

Even for those Chinese whose loyalties do not necessarily lie with the Chinese Communist Party in the longer term, the spectre of instability is a very real and worrying concern. With an estimated 300 million unemployed and underemployed people in the streets many Chinese are deeply concerned about the potential for civil unrest, as high inflation and rampant corruption fan anti-government resentment as they did in the Spring of 1989. These fears are exacerbated by the closing chapters of China's political succession drama. Needless to say, the potential for social unrest in China also strikes fear in the hearts of Hong Kong Chinese.

The Sino-British dialogue on transitional issues experienced a major setback in the wake of June 4, 1989. Both sides approached the negotiating table with a different attitudes, which has not been conducive to smooth progress. Given the political dynamics and concern about stability now evident in China, it is far from certain that China's approach will soften in the period leading up to July 1, 1997.

In summary, China's attitude to Hong Kong's transition is likely to be based on maintaining her obvious self-interest in economic terms, while protecting her social stability.

Recent Developments

Airport Financing Agreement. Last November, the PRC and England reached agreement on the overall financing of the new airport. At the end of June, both sides reached a further agreement on the specific terms of the financing. Both agreements will pave the way for corporations involved in the airport project to raise equity for continued construction and to offer bids for the airport's infrastructure-related projects.

Court of Final Appeal. Perhaps the biggest boost to confidence in Hong Kong was the agreement reached in early June on the establishment of a Court of Final Appeal in Hong Kong after 1997. One of the strongest underpinnings of Hong Kong's success has been its stable, transparent, independent rule of law. Establishment of an independent Court of Final Appeal in Hong Kong is a vital step in ensuring Hong Kong's autonomy after 1997, protecting the rights of Hong Kong's citizens, and boosting business confidence in the territory.

Expanded Political Contacts. In early July, Hong Kong's Chief Secretary Anson Chan flew to Beijing for talks with the China's Foreign Minister and the director of the Hong Kong and Macau Affairs Office on the future of Hong Kong. This was seen as a significant boost in Sino-British relations: Beijing had previously been unwilling to meet with Ms. Chan because of her position with the British colonial government.

The U.S. - Hong Kong Policy Act

The principal legislative vehicle defining U.S. interests in the 1997 transition process is the U.S. - Hong Kong Policy Act of 1992 which calls for regular reporting by the State Department to the U.S. Congress on the process of implementation of the provisions of the Joint Declaration. This act establishes provisions for implementing relations with the Hong Kong SAR and acknowledges support for policies reflected in the Joint Declaration.

The American Chamber of Commerce welcomed the concern of Congress for the well being of the people of Hong Kong and a member of our Board of Governors testified in favor of the legislation. The act is a solid and comprehensive statement of U.S. interests and provides for regular reporting to Congress about the process and progress in Hong Kong's transition to the Special Administration Region of the People's Republic of China. It is our firm belief that this legislation serves American and Hong Kong interests in its present form and that amendments and/or additional legislation are unnecessary and unwarranted.

Protecting and Promoting U.S. Interests in Hong Kong

In 1984, even prior to signing of the Joint Declaration, our Chamber prepared a list of the critical qualities that have contributed to the success of Hong Kong as a center for international business and finance. We developed a comprehensive list of "47 Points" that are fundamental to Hong Kong's future stability and of vital importance - not only to the international business community - but to the welfare of the people of Hong Kong. In broad terms they include: continuation of a stable and reliable legal system, an independent and impartial judiciary, sanctity of contracts and protection of rights, a social environment free from corruption and coercion, responsible environmental practices, and many other rights and privileges of residents. The list has been translated into Chinese and circulated widely to China's leaders.

Hearings such as this are useful and productive and the Chamber encourages Members of Congress to use them as a platform to promote further understanding of the developing situation in Hong Kong and the transformation underway in China. Moreover, the Chamber strongly urges Members and staff to visit Hong Kong and China and engage in dialogue on issues of concern. Dialogue will, in our view, be more effective and constructive than sanctions or legislative initiatives, which could be more harmful than helpful given the deep sensitivities over sovereignty which cloud the current discussion over Hong Kong's future.

In addition, strengthening of academic, educational, legal, and cultural exchange programs will serve to reassure the people and governments of Hong Kong and China that our interests extend well beyond 1997, and not only in the economic context.

In conclusion, The American Chamber of Commerce in Hong Kong advocates an approach of showcase diplomacy rather than megaphone diplomacy in dealing with Hong Kong's transition and the promotion and protection of U.S. economic and strategic interests in the region. This approach will be welcomed by the people of Hong Kong including the American community in Hong Kong.

Our Chamber leadership fully agrees with the May 17 statement by Senator Craig Thomas that the United States has a tremendous stake in the future economic and political stability of Hong Kong.

July 27, 1995

THE AMERICAN CHAMBER OF COMMERCE IN HONG KONG

Elements Fundamental to Hong Kong's Success

Americans have long understood Hong Kong's global economic importance and its attractiveness as a place to conduct business. As a result, U.S. interests in Hong Kong have grown over the years and investment has soared. Today the immense presence of U.S. and foreign investment in the territory is surpassed only by China.

The American Chamber of Commerce in Hong Kong (AmCham) has promoted Hong Kong's unique attributes that have enabled the territory to flourish and prosper and become the phenomenal success story it is today. These elements remain **fundamental** to Hong Kong's future success. In broad terms, they include: safety, security, education opportunities, clean environment, sound infrastructure, clear and convenient immigration policies, favorable fiscal policies, a stable and reliable legal system, and a social environment secure from corruption and coercion.

These decisive elements are mentioned time and time again as reasons why international businesses operate and invest in Hong Kong. Over the years, AmCham has compiled a list of 47 points that we think are of vital importance to the international business community.

Rights and Privileges of Residents

It is essential to Hong Kong's continued attractiveness to foreign companies that elements of current Hong Kong practice be maintained; particularly that:

1. Entry and departure from Hong Kong for business travel or tourism is unrestricted or minimally restricted for local as well as international travelers.
2. Visas allowing residence and local employment for nationals and their family members of other countries are granted on the basis of procedures which are simple, comprehensible, managed efficiently, processed in a timely manner, not characterized by onerous restrictions, and compatible with the interests of Hong Kong's employers, whether domestically based or foreign companies.
3. Individual expatriates seeking to own or operate small businesses are eligible for, and generally gain permission for, local residence and employment status.
4. Assignments for expatriate staff to work in Hong Kong are generally free from restriction, subject only to their meeting certain minimal terms of employment.
5. Continuity of residence permission for expatriates, once granted, is not subject to any quota system, onerous review, or limited duration, subject only to the continuation of employment and in the absence of legal wrongdoing by the applicant.

6. Permission for residence and employment is not based on requirements for on-going "guarantees" such as cash deposits, bonds, etc.
7. Permission for residence employment is based wholly on factors other than racial or national classifications.

Business/Legal Environment

Hong Kong has benefitted from:

1. Government policy which consistently and traditionally places primacy on market forces as the principal economic determinant.
2. Minimal use of centrally directed incentives and disincentives, entitlements or restrictions as a means of channeling the economy according to a central development plan.
3. The lack of governmental bureaucratic or administrative approval requirements restricting foreign investments.
4. The simplicity of the taxation system, including filing documentation, standardization of rates and procedures, minimalization of complexity or formulae, and equality of application of tax law, procedure and rates without distinction between domestic and foreign entities.
5. The Hong Kong government's traditional view of tax policy and rates as a principal incentive for foreign trade and investment -- which has ensured that tax rates remain competitive with, or favorable to, other countries in the region.
6. An extensive body of commercial law, based on the familiar British system, which provides effective enforcement of contracts and protection of rights.
7. Consistent and assured access to an impartial "final arbiter" in cases of law or dispute.
8. The existence of a comprehensive body of company law, which facilitates a wide range of trading and investment activities and which draws no distinction between foreign and domestically owned firms.
9. The fact that foreign and domestically owned companies are allowed to set up offices, incorporate, register branches, etc, without strict government guidelines defining the future scope of their activities or mandating levels of performance.
10. The fact that companies may be structured without onerous conditions regarding ownership, management, composition of the board of directors, etc. (such as conformity with quota systems or residency requirements).
11. A well-managed government civil service which operates efficiently.

Communications/Transportation

Hong Kong Benefits from:

1. Hong Kong's participation essentially as an autonomous entity of all world communication links, based on Hong Kong's consumer-oriented telecommunications services, which are freely available to all.
2. The fact that Hong Kong's telecommunications are not monitored or censored.
3. The fact that data flow from Hong Kong is generally unrestricted, whether transmitted electronically, by post, or by other means.
4. The fact that communications technology and equipment are available to all on a commercial basis, not subject to government monopoly or restrictions.
5. The fact that telecommunications essentially are managed by private companies on a commercial basis according to practices that assure users of high quality service at reasonable cost.
6. Hong Kong's widely available, efficiently managed, privately owned freight handling, forwarding, transportation and passenger services, which are a major stimulus to trade, investment, manufacturing and tourism.

Banking & Financial Services

Hong Kong's success as a trading and financial center is based on its continuing to have:

1. A large number of local and international financial institutions providing a full range of commercial and personal banking services, including savings, checking, leasing, hire purchase, and loan financing, to all without national restrictions.
2. Assurances that funds are freely convertible, and transferrable into and out of Hong Kong by companies and individuals through commercial mechanisms.
3. A banking system which accommodates the operations of a large number and wide range of banks both domestic and international which are licensed to provide a full range of banking services.
4. Assurances that individuals and businesses enjoy unrestricted ability to borrow and lend, subject only to normal commercial constraints.

Human Resources

Hong Kong benefits from:

1. A large pool of skilled management, technical, office, and factory staff with a history of high productivity.
2. The historical development of a pool of management and technical professionals, which have received advanced education abroad or training with multinational corporations.
3. The direct access to labor by companies, and the freedom to employ labor without the intercession of any intermediate organization.
4. Labor relations which can be conducted without onerous restrictions on companies' right to hire and fire without reference to quota systems.

Education

Hong Kong Readily Enjoys:

1. Readily available public and private education at the primary and secondary levels according with internationally recognized standards and curricula.
2. Freedom for private groups or individuals to establish, and have recognized, institutions serving the special requirements of certain sectors (such as the Hong Kong International School, and Swiss-German School, etc.)
3. The absence in private and public education of censorship of materials, use of quota systems, outside interference with the hiring of staff, or restrictions based on national, ideological, or religious grounds.
4. The maintenance of universities of international standard offering internationally recognized degrees.

Social Environment

Hong Kong Residents Enjoy:

1. Equality before the law, not dependent on race, residential status, or other distortion.
2. No restriction on residential location or freedom of movement within the territory on the basis of classification of residents.
3. The widespread, free and generally unrestricted activities of English language press, television, radio, other published media, and their free access to international news agencies, entertainment, and information sources.

4. The wealth of cultural activities reflecting and supporting Hong Kong's status as an international center of culture, media, and the arts.
5. The wealth, variety and accessibility of shopping and distribution centers for all manner of goods, products and services, marketed in an unrestricted commercial environment.
6. The existence of a deeply rooted and long standing spirit of tolerance and cooperation which characterizes Hong Kong's constituent racial and national communities.
7. The large and readily available supply of various types of accommodations suitable for expatriate use, which can be leased or purchased commercially without restrictions.
8. The existence of a wide variety of facilities for, and freedom to exercise, personal religious beliefs, and the freedom of religious bodies to engage in propagational and educational activities corporate.
9. That residence in Hong Kong is accompanied by a unique freedom to participate in the life of the community as a whole, including equal access to participation in recreational, social, civic and other organizations.
10. The maintenance of the English language as a principal language of business and government.
11. The maintenance of high quality public and private medical facilities.

COVER STORY



Built for business: Hong Kong's rising costs are starting to bite.

AERPHOTO INTERNATIONAL LTD

HONG KONG'S ECONOMY

✓ The Price of Success

Hong Kong's biggest problem now isn't politics. It's costs. Chronic inflation and lagging productivity are taking a toll on growth. But don't underestimate Hong Kong's resilience.

By Gary Silverman in Hong Kong



For such a murky place, Hong Kong is so often depicted in stark terms. It's either a go-getter's paradise or the last place to put your money—the embodiment of capitalist achievement or an open sewer dotted with pricey real estate.

There's cause for all this contradiction. If Hong Kong seems simultaneously close to heaven and hell—it is. In just two years, one of the world's economic powerhouses will be absorbed by the world's biggest developing country. So much is at stake—the world's seventh-biggest stockmarket, 6 million lives. It's natural to speculate about what's going to happen when China

takes over in 1997 because no one really knows.

But two things are certain about Hong Kong today. One: Reports of its death, however tempting they may be to write, are greatly exaggerated. Take the recent obituary in New York-based *Fortune* magazine—the same magazine that last November called the colony “the world's best city for business”—which figures that transition to Chinese rule in two years' time will kill the city. Yet no one would pay the colony's sky-high rents to be in a dead economy.

Two: Hong Kong's most pressing problem isn't politics but costs. And these costs are starting to bite. Consumers are cutting back and businesses are laying off workers, pushing unemployment to a nine-year high. Infrastructure spending

will smooth out the current downturn, but chronic inflation and some of the world's highest office rents are raising doubts about the competitiveness of Hong Kong's service-oriented economy—now, in 1997 and beyond.

The transition to Chinese rule is, of course, the great wildcard. It will almost certainly produce shocks; it may cause disaster. But for now, Hong Kong's business community has demonstrated its confidence. By shifting the bulk of their manufacturing into China, business leaders have bet their economic futures on their new rulers. Hong Kong people haven't gotten this far by being timid.

“Some people might be concerned about politics; I am totally unfazed by that,” says Stuart Leckie, Asia-Pacific chairman of Wyatt Co., the consulting and actuarial firm. “If everyone was afraid of politics, rents would fall, salaries would fall. The real concern is costs.”

Indeed, inflation has been flirting with double digits throughout the 1990s. Why

this is the case is not a matter of unanimity among economists. Some analysts say the economy just lacks free markets, particularly in land. The government depends on land sales as a source of revenue—one reason why taxes are low—and keeps the supply scarce; the big developers go along, and prices remain high.

Others point to Hong Kong's currency peg of 7.8 to the U.S. dollar. The peg is designed to prevent capital flight, and it has worked. But to observers like London-based investment advisers Independent Strategy, the peg has led to "the silliest monetary policy in the region."

To keep the peg, Hong Kong interest rates track those in the United States. That meant in the early 1990s, just as foreign capital was flooding in, that Hong Kong's real interest rates were less than the rate of inflation, fuelling a bubble in stock and property prices.

Hong Kong is still trying to recover. Higher U.S. rates burst the asset bubble

mists expect the increase in GDP for the year will fail to equal last year's 5.5%.

There are certainly clear signs of a slowdown. Retail sales slid 5.2% in February, 1.4% in March and 2.5% in April. Unemployment has climbed as high as 3.1% this year. Hang Seng Bank estimates joblessness will rise from 1.9% in 1994 to 3.2% this year, as manufacturers slash employment 5% and streamlining service companies increase theirs by only 2%. This raises the spectre of structural unemployment—and Hong Kong has no unemployment insurance.

"I'm quite concerned that we are going down the road of New York," con-

the half million New York City lost between 1950 and 1980. In 1988, close to half of Hong Kong workers were in manufacturing; now less than a fifth are. Manufacturing's share of GDP, meanwhile, has fallen to 11.4% in 1993 from 24.3% in 1984.

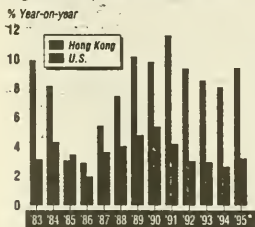
The transition has been fairly painless, in part, because Hong Kong entrepreneurs didn't go very far. Hong Kong businesses now employ 5 million people in Guangdong province—nearly 2 million more than the territory's total workforce, says the Hong Kong Trade Development Council.

The goods from Guangdong province largely leave through Hong Kong and that has created opportunities: Hang Seng Bank says 670,000 service jobs were added in Hong Kong from 1988 to 1994. "If we didn't benefit from the abundance of labour and land across the border, we would be in bad shape today," says Edward Leung, senior economist at the



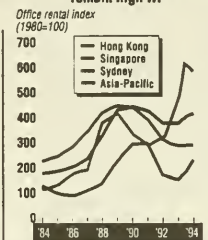
Not A Bargain

Hong Kong experiences high consumer-price inflation ...



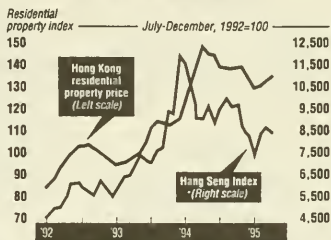
* Annualized rate Source: Jardine Fleming

... while office rents remain high ...



Source: Jones Lang Wootton International Research

... and the asset bubble deflates



Source: Jardine Fleming

last year. But even so, inflation is picking up this year—it's running at an annual rate of 9.4% through May—as a weaker dollar makes imports costlier. "I don't think there is anything the government can do about inflation," says Joanne Yim, economic research manager at Hang Seng Bank. "It is definitely a problem for long-term development."

Nobel Prize-winning economist Milton Friedman is among those who have predicted the peg will be abandoned after the Chinese take over Hong Kong. What impact that will have on financial markets is anyone's guess.

In the meantime, Hong Kong people face a double whammy: potential capital gains are eroding and costs are still rising. That adds up to what some economists call a growth recession. The government says the economy probably grew at 6% in the first quarter, but most econo-

mists expect the increase in GDP for the year will fail to equal last year's 5.5%. There are certainly clear signs of a slowdown. Retail sales slid 5.2% in February, 1.4% in March and 2.5% in April. Unemployment has climbed as high as 3.1% this year. Hang Seng Bank estimates joblessness will rise from 1.9% in 1994 to 3.2% this year, as manufacturers slash employment 5% and streamlining service companies increase theirs by only 2%. This raises the spectre of structural unemployment—and Hong Kong has no unemployment insurance.

What's remarkable is that this has not been a problem before, given the extent of Hong Kong's restructuring. Since mid-1988, Hong Kong has shed 446,000 manufacturing jobs—nearly as many as

Hong Kong TDC.

This is the Hong Kong way: disorganized, improvising, profitable. If the basis of capitalism is the ability of capital to find its highest return, Hong Kong is the most capitalist place on earth. And this capacity to move quickly, without direction, is why so many economists are optimistic about Hong Kong's chances to restructure efficiently.

"Hong Kong has gone a long way without too much fuss," says Sun Bae Kim, senior economist at Goldman Sachs. "There's no Ross Perot saying there's a great sucking sound in China."

But the logic of Hong Kong's restructuring is worrisome. As China, particularly southern China, opened up, Hong Kong was the only game in town. But costs are rising in the south—wages jumped 30% last year in many Guangdong enterprises. As a result, analysts like

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COVER STORY

Marc Faber, a private investment adviser and prominent pessimist, predict labour-intensive production will shift to other parts of China and away from Hong Kong's service providers.

What's more, as production moved to China, the rise in asset prices was taking hold in Hong Kong and everyone, it seemed, became a property developer. This transition wasn't only a matter of greed but of need—the consequence of rising costs.

"Rather than improve productivity, they started to speculate in real estate. This is the disastrous effect of high-inflation economies," says Faber. "The peak of prosperity was the mid-1980s. The rest was hot air and speculation."

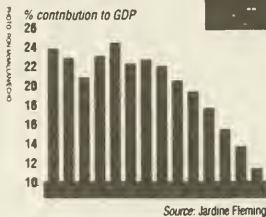
Hong Kong's manufacturing exodus was something of a Faustian bargain. Instead of investing in productivity, Hong Kong companies shifted labour-intensive operations to low-cost China. This was the most efficient strategy in the short-run, but it meant that unlike South Korea, Taiwan or Singapore, Hong Kong failed to climb the value-added ladder.

Consider the differences in strategy: Twenty years ago, nearly 70% of Taiwanese bank loans were going to manufacturers. But in Hong Kong, the percentage was in the teens, well below manufacturing's contribution to GDP. When there was time to become a Silicon Valley, Hong Kong's banks and entrepreneurs were doing other things.

"Hong Kong manufacturers have always been very shortsighted," says Hang Seng Bank's Yim. "They want returns in two years. The Hong Kong government has never done anything for manufacturing planning, unlike Singapore, which has a long-term view. Until now, we've been lucky. I don't know what will happen in the future."

Hong Kong's bet is that its people will

Hong Kong's manufacturing sector shrinks



continue to be able to do things that the Chinese can't do for themselves. The easy work will be done in China. But in a speech last year, TDC Chairman Victor Fung said "the lion's share of the stages of production" will be in Hong Kong. This will include everything from finding customers and raw materials, to financing, quality control, packaging and shipping.

As foreign investors have run into difficulties in China, however, Hong Kong has been adapting its strategy. At a recent press lunch, Fung emphasized that his council has a new way to promote the city. Where once the mantra was Hong Kong as "the gateway to China," this year the sales pitch is Hong Kong as "the gateway to Asia."

In either case, the idea is to capitalize on Hong Kong's traditional strength: its speed in responding to the market. If hem lines are rising or Teenage Mutant Ninja Turtles are the rage, Hong Kong is hip. "Hong Kong has established long-term business relationships with our buyers," says economist Leung at the TDC. "Trading through Hong Kong, in many cases, provides convenience and certainty."

But certainty is the most likely casualty in 1997. Not only is the peg and the value of the currency a matter of doubt, but the rule of law itself is in question. For businesses like private banking, this could be catastrophic. But again adjustments are being made.

At one European bank, the solution has been to move accounting and legal operations to Singapore for safety, says a senior executive. "We don't feel comfortable with society in Singapore," he says. "But from a banker's point of view, Singapore has advantages. We know the legal system in Singapore. We're not sure of the integrity of the legal system in Hong Kong."

Nonetheless, the banker says he expects his private banking business in Hong Kong will improve after 1997,

thanks to a growing market in southern China. And he says his Hong Kong clients are pursuing a similar strategy; their passports may be foreign, but their businesses are in China. "If our clients move en masse, we would leave," says the banker. "But that hasn't happened. All our clients are investing money in China. They are making money there."

Whether they will be making money in Hong Kong as well will depend on whether the territory's service providers become more productive. Measuring service productivity is tricky, but economists have real doubts that Hong Kong is meeting the challenge. The growth in output per worker slowed to 2% last year, compared with an average 8.7% from 1986 to 1994.

"We've been hustled into this high value-added economy faster than would normally have happened," says Morgan Stanley economist Michael Taylor. Workers are unable to create the value-added that the cost structure demands, he says, possibly reflecting a brain drain after the massacre of democracy protesters at Tiananmen Square on June 4, 1989.

This puts pressure on profits. S.G. Warburg warns that listed Hong Kong companies will "start to see a structural downturn in profitability." Jardine Fleming's June strategy report says "Hong Kong's corporate earnings outlook remains lacklustre for the next 18 months" and profit growth will be "significantly below" the region's average.

Some bigger service providers are mimicking their manufacturing brethren and shifting lower value-added operations to cheaper places. Hongkong Bank, which has imported hundreds of tellers from China, is building a \$26 million data-processing centre in Guangzhou to handle mundane back-office work. Cathay Pacific is putting its computers in Sydney because land costs there are 1% of those in Hong Kong's New Territories.

But some service jobs can't be shifted overseas, such as real-estate agents, whose wages rose about 16% in the year to last September. The only solution for cost-cutters is cutting labour. And again, there are indications that service providers are taking harder looks.

Hong Kong's imports last year of labour-saving office equipment soared 32%. And Paul Curley, managing director of Q3 Associates, a firm that helps fired executives find jobs, says he has more clients than ever before in his six years in the territory and it's taking twice as long to place them.

"We are going through a very significant increase in business because companies are cutting back and they are almost exclusively service companies," he says. "The whole question of human-re-

Bottom of the Heap

Hong Kong's productivity growth lags its Asian rivals





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source activity is beginning to be looked at much more closely because of the tremendous rise in salaries."

And some see room for cuts. Hongkong Telecom, which has been reducing staff since 1991, still has 53 employees per 10,000 lines, compared with a U.S. average of 38, Jardine Fleming noted in a recent report. Mused the brokerage: "Labour costs are easy to cut."

Byram Johnston, who heads EDS Managing Consulting Services in the Asia-Pacific region, agrees. "Manufacturing has hit the wall and taken the issue head on. The other guys haven't. People like the banks and the telephone company will go through the next realignment."

Unemployment now is largely concentrated among older, unskilled workers and this has troubling implications, says Lui Tai-lok, a sociologist at Chinese University who is studying Hong Kong's de-industrialization. His surveys have found that working class and middle class Hong Kong people share surprisingly similar views: everyone thinks they have a chance. "But it rests on a very fragile basis," Lui says. "You need to have continuous growth to sustain that perception."

Unions increasingly see inequity in the form of foreign workers imported to fill a labour shortage. The number of unemployed is dwarfed by the nearly 200,000 foreigners working in Hong Kong, 27,000 on the airport project, says Lee Cheuk-yan, chief executive of the Confederation of Trade Unions. "We don't agree that there's a labour shortage," he says. "There is a shortage of cheap labour."

For contractors, that is a labour shortage. "You need to bring in people or the airport would not be built on time," says Michel Betant, Asia managing director of Dragages & Travaux Publics, which is working on the airport and several other infrastructure projects. "The problem is that there are not enough workers who are qualified or who want the work."

It's a question of mismatch. The government's solution is retraining, but that has its problems. Workers not only have to learn new skills, they have to forget old ones and the pay they commanded. "De-training" is the term used by Chan Wai Kwan, secretary-general of the Hong Kong Coalition of Service Industries. "It's not difficult to retrain a mechanic into a housekeeper," he says. "But the psychological resistance to this may be what is now causing the problem."

Hongkong Bank's experience is illustrative. Last year, the government referred 150 retrained workers to the bank. Fifty-one were not interested and 17 failed to show up for interviews. "They demand a salary comparable to what they used to



Hong Kong labour: Unions, bosses fail to agree on 'shortages.'

get," says Jennifer Lun, senior personnel manager at the bank. "Their expectations should be managed during the training programme." Of the 82 workers interviewed, she says, 59 were judged unsuitable, four declined job offers and 19 were recruited. Six have subsequently resigned.

In this environment, many economists believe a little unemployment wouldn't be such a bad thing. Right now Hongkong Bank takes two months to train tellers, but can only keep them for an average of six months to a year. Productivity would improve if workers had fewer opportunities to switch jobs, economists say.

"I don't think the work ethic is here any more," says Enzo von Pfeil, senior regional economist at S.G. Warburg. "You are getting close to becoming less competitive. They are going to have to start seriously considering educational policy, standards of English, the fact there are new competitors in the region who are very hungry."

But Hong Kong's business community says it is ready. After all, this is a city that has always lived dangerously. There's no shortage of survivors—of the Japanese occupation, the communist victory on the mainland, the Cultural Revolution, Tiananmen Square and any number of economic disasters.

"We can't compare Hong Kong with cities in unchallenged environments," says Leung of the TDC. "We are changing. We have the fundamental resilience, the basic instinct. We only die if we want to die. If we lose our instinct or desire to survive, we are going to die. We are not prepared to die yet."

Universal Business Principles

It is fundamental to the philosophy of the American Chamber of Commerce in Hong Kong that good ethics and good business are synonymous. AmCham believes that American business plays an important role as a catalyst for positive social change by promoting human welfare and the principles of free enterprise. AmCham recognizes that American companies already set the highest standards for ethical business practices. We encourage members to communicate information about their existing programs and practices relative to good corporate citizenship in the markets in which they operate.

AmCham endorses the following business principles and encourages member companies to embrace them in all their operations, in the context of existing statements of corporate values of individual companies. We adopt these principles as a foundation for dialogue and action by business leaders.

We shall abide by the laws of the United States and the countries where we operate.

We shall aspire to be good corporate citizens, seeking opportunities to make positive contributions to the cultural, social, educational, scientific and artistic life of the communities in which we operate.

We shall uphold the dignity of the worker and set positive examples for their remuneration, treatment, health and safety. To that end we shall not knowingly engage in business with firms which employ forced labor, or treat their workers in inhumane ways.

We shall endeavor to promote the highest possible standards of training and education for our employees. Training objectives derive from raising issues such as promoting self-confidence, independent and innovative thinking, self-improvement, and problem solving through teamwork.

We shall engage in environmentally responsible business practices in our operations and be proactive in promoting the value of such behavior in the communities in which we operate.

We shall be vocal in support of improved market access and intellectual property rights protection in the countries in which we operate.

We shall uphold high standards of professional and business ethics and incorporate these values into our employee training programs.



THE AMERICAN CHAMBER OF COMMERCE IN HONG KONG

The US Presence in Hong Kong

July, 1995

Hong Kong's leading role as an international center for trade is evident when one considers the number of foreign nations with interests in the territory and the amount of their respective investments in the region. The United States of America is one such nation with a long history of involvement in Hong Kong. The immense presence of US investment in the territory is surpassed only by China, and the contributions made by America to Hong Kong's economy are significant.

Americans have been present in Hong Kong since the beginning of its modern history as a colony of Great Britain. The US was the first foreign government to establish a consulate in Hong Kong signifying their understanding of the territory's global economic importance. Americans went on to build Hong Kong's first church, drive the first automobile and eventually open the first 1,000 room hotel, the Hong Kong Hilton.

American interests in Hong Kong grew over the years, along with its resident population, and investment soared. At present, US citizens represent the largest foreign business group residing in the territory, with an estimated 30,000 permanent or temporary US residents in Hong Kong as of early 1995. In comparison, there are approximately 25,000 Canadian residents and even fewer British.

U.S. Investment in Hong Kong

There are over 1000 U.S. companies operating in Hong Kong, with a total cumulative U.S. direct investment estimated at US\$10.5 billion, third behind China and England.

In terms of direct investment in Hong Kong's manufacturing industries, the U.S. remains the second largest investor. According to the 1994 Survey of External Investment in Hong Kong's Manufacturing Industries, total foreign investment by end-year 1993 totaled approximately US\$5.2 billion. Japan accounted for 34.1% (US\$1.78 billion est.) of the total investment, and the U.S. contributed 28.1% (US\$1.47 billion est.).

Hong Kong is home to a large number of regional headquarters of overseas companies. Of the 714 regional headquarters identified by the 1994 Survey of Regional Representation by Overseas Companies, the U.S. has the largest number of regional headquarters with 178, followed by Japan with 91.

The U.S. financial industry maintains a large presence in Hong Kong. At the end of 1993, there were 13 licensed U.S. banks with assets over US\$38.6 billion, making the U.S. the second largest foreign bank group by number. In addition, the US has 21 licensed insurance companies in Hong Kong, again ranking the U.S. second in number.

Eleven US states have set up representative offices in Hong Kong and 12 US ports maintain a presence here.

More than half of the American firms in town have been here more than ten years and almost a third have been here more than 20 years. Reflecting a long association with Hong Kong, nine US companies have been here for more than half a century.

U.S. Trade with Hong Kong

Hong Kong is an important trading partner for the U.S., ranking as the U.S.'s 13th largest trading partner, and 11th biggest market for U.S. exports (*USDOC*). During 1994, the top five U.S. exports to Hong Kong were: electrical machinery & parts, office machines and computers, telecommunications and audio-visual equipment, passenger cars, and plastics in primary form. In 1993, the U.S. was the largest supplier of goods to the Hong Kong government, with sales reaching US\$89.1 million. The Hong Kong consumer's heavy reliance on American goods and services is steadily growing. Each Hong Kong citizen spends an average of US\$1,700 a year on American products.

The U.S. is Hong Kong's second largest trading partner, after China. The top five domestic Hong Kong exports to the U.S. include: clothing and accessories, machine and computer parts, semi-conductors & electronic valves, watches & clocks, jewelry. Hong Kong also serves as an important re-export zone for U.S.-China trade, handling 68% of China's export to the U.S. and 32% U.S. exports to China in 1993.

	1991	1992	1993	1994
US Exports	8.1b	9.1b	9.9b	11.4b
US Imports	9.3b	9.8b	9.6b	9.7b
Total Trade	17.4b	18.9b	19.5b	21.1b

The deep rooted American interest in Hong Kong has created a valuable east-west partnership unlike most others. With continued cooperation, trade between Hong Kong and the United States will prosper to an even greater extent. Considering the bullish outlook on the future of both Hong Kong and China, the US-Hong Kong relationship, an asset for both nations, should continue well into the twenty-first century.

July 1995

Biographical Introduction for Dinah PoKempner:

Dinah PoKempner is legal counsel for Human Rights Watch/Asia, a human rights monitoring organization known formerly as Asia Watch which maintains an office in Hong Kong. Ms. PoKempner, who directs research on Hong Kong and Indochina, has lived in Hong Kong in 1981 to 1983, and again in 1991, and has written frequently on civil rights issues related to the territory. She is a graduate of Columbia University School of Law and Yale University.

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Testimony Before the House Committee on International Relations Subcommittee on Asia and the Pacific Dinah PoKempner, Counsel, Human Rights Watch/Asia July 27, 1995

My testimony will describe pressing human rights issues in Hong Kong in the lead-up to the 1997 transfer to Chinese rule. Human Rights Watch/Asia, formerly known as Asia Watch, is a non-governmental human rights monitoring organization that has reported extensively on human rights in China and Hong Kong. We appreciate the opportunity to submit this statement to the House Subcommittee on Asia and the Pacific.

Hong Kong today is one of the most economically developed and prosperous locations in Asia, a region whose economic growth is predicted to lead the world in the twenty first century. It also enjoys one of the best environments in terms of human rights. These two phenomena are integrally related. Hong Kong embodies a society where the rule of law prevails. Its legal system is exemplary in the region, known for integrity and respect for basic rights; its civil service is a meritocracy and accountable to the law; its media is among the freest in Asia; its residents enjoy a practically unfettered flow of global information and the freedom to express their own views.

None of these characteristics may survive the transition to Chinese rule after 1997. In 1984, the governments of China and Britain promised that Hong Kong would "enjoy a high degree of autonomy" after the 1997 transition. That treaty, known as the Joint Declaration, stipulated there would be a local Court of Final Appeal to replace the Privy Council as the court of last resort, an elected legislature, continuity of tenure of the present civil service, and legal guarantees for fundamental individual liberties. Yet far from reassuring the international community and investors on the success of the upcoming transfer, China has threatened to overturn each one of these obligations.

Hong Kong governor Chris Patten rejected proposals that would have extended a one person/one vote rule to elections of all representatives to the



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Human Rights Watch is a not-for-profit corporation monitoring and promoting human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords.

colony's legislature, but even his more modest electoral reforms were condemned by China. The reforms, approved in February and June 1994, lowered the voting age to eighteen, abolished appointed seats for representative municipal, district and legislative bodies, and augmented the number of Legislative Council seats elected by functional constituencies. Beijing was not subtle in expressing displeasure. Immediately after the reforms were enacted, Chinese officials unveiled an electric signboard to count the days remaining until Chinese rule, and threatened to dismiss all legislators and reconstitute the three levels of publicly elected government bodies upon the June 30, 1997 handover. These threats were formalized in a resolution of the Standing Committee of the National People's Congress ordering the dismantling on July 1, 1997 of all elected bodies at the legislative, municipal and district levels.

Yet in spite of these threats, Hong Kong successfully held elections for both its district boards and municipal councils under the new electoral reforms. In both elections, the Democratic Party, a recent union of pro-democracy politicians, performed strongly, winning between two to three as many seats as candidates from the pro-China Democratic Alliance for the Betterment of Hong Kong. In September of this year, Hong Kong voters will cast ballots for the first Legislative Council that will be comprised entirely of elected members, even though only twenty of sixty seats are elected through universal suffrage (the remaining forty are indirectly elected through business and professional constituencies and an electoral college). The Democratic Party currently holds fourteen out of eighteen directly elected seats on the Legislative Council, yet China has branded some of its leaders as "counterrevolutionaries" who should not be allowed public office in the new Hong Kong. Chinese officials refuse to meet with these legislators or the governor, instead directing their way a steady stream of invective. In retaliation for Governor Patten's first proposing electoral reforms, Beijing established a "shadow" authority, the Preliminary Working Committee, which will set up the mechanisms to nominate the new chief executive and appoint a compliant legislature, the latter to be established in 1996.

The Joint Declaration stipulated that Hong Kong would be vested with "independent judicial power, including that of final adjudication." A Court of Final Appeal, "which may as required invite judges from other common law jurisdictions to sit" was to take the place of the British Privy Council. This provision had a two-fold effect. It would guarantee to the Hong Kong court an adequate pool of high-caliber judges from the entire spectrum of common law jurisdictions, keeping it in touch with the Commonwealth's legal developments. It would also be insurance should local judges become subject to political pressure or direction after the transition. However, in September 1991, the Sino-British Joint Liaison Group announced an agreement whereby only one foreign judge would be able to sit on at most half of the Court's sessions. This arrangement was strenuously protested by the Hong Kong bar and rejected by the Legislative Council on two separate occasions. The British government has refused to renegotiate or delete the provision fixing at one the number of foreign judges who may sit on the court, and the Chinese government has rejected any modification. China has also threatened to disband the Court in 1997 should Britain introduce the legislation without China's approval.

On June 9, 1995, Britain and China reached agreement on implementing legislation that

would preserve the limit of one foreign judge, delay the establishment of the Court until after the 1997 transition, and carve out of its jurisdiction "acts of state such as defence, foreign affairs, etc." This legislation, passed yesterday by the Legislative Council, threatens to leave Hong Kong with a high court that is severely compromised in its independence, jurisdiction, and the finality of its judgements.

The threat to the Court's independence stems not only from the limit of one foreign judge, but also from China's decision to disband the legislature elected this September. Should that occur, Beijing's appointed legislature will be called upon to rubber-stamp the most basic institutional arrangements for the post-colonial era, including confirming the judges nominated for the Court by the Chief Executive chosen by Beijing. Nor will the Court of Final Appeal be able to establish its authority through precedent before the switch to Chinese rule. The Court of Final Appeal's jurisdiction is in the hands of the Chief Executive, who may issue certificates stating an issue involves an "act of state" and is therefore unreviewable. Should the Hong Kong courts challenge this judgement, their decision may be reviewed ultimately by the Standing Committee of the National Peoples Congress in Beijing under its power to interpret Hong Kong's Basic Law. Thus the finality of judgements from the Court of Final Appeal is also uncertain. It is unlikely that China will adopt the narrow and constrained view of the common law doctrine of "acts of state." Issues ranging from commercial disputes with state-owned enterprises to habeas corpus actions could be interpreted in light of national security concerns to involve "acts of state." Such developments would not only threaten human rights but undermine business confidence in Hong Kong.

Having declared its willingness to reconstitute the highest levels of the legislature and the judiciary, China is now raising fears that it will meddle with the civil service as well. Under the Joint Declaration, public servants, including foreign nationals, may retain their jobs after the transition, although "principal officers" in the government must be nominated by the chief executive and appointed by Beijing. The recruitment, appointment and promotion of civil servants is to remain on the basis of merit. The Hong Kong government has pursued a policy of replacing expatriates in senior administrative positions with local administrators. China, however, has criticized this localization process, claiming it is being inadequately consulted. The director of the Hong Kong and Macau Affairs Office, Lu Ping, criticized the appointment of senior civil servants by the Hong Kong government because Beijing was not given personnel files on the appointees and details as to what nationality and passports they hold. Senior civil servants fear that Beijing's purpose in reviewing files and passports is political screening. Talks on this issue between Britain and China have been stalled. Beijing's Preliminary Working Committee has called into question the role of the Public Service Commission, an independent body that advises the Governor on senior appointments and promotions, and handles complaints.

China's hostility to the guarantees of basic civil and political rights was made plain by its opposition to the 1991 Bill of Rights, and its threats to repeal the legislation after June 30, 1997. The Bill of Rights largely follows the language of the International Covenant on Civil and Political Rights, to which Britain is a party and China is not. The Joint Declaration provides that

the ICCPR "as applied to Hong Kong" would remain in force after the transition. China's objections centered on the entrenchment of the Bill of Rights in the colonial Letters Patent; this entrenchment enables Hong Kong courts to void inconsistent laws until the 1997 transfer (the Bill of Rights repeals all inconsistent prior legislation). Chinese advisers have argued that the Basic Law, the quasi-constitution for the territory after 1997, already protects fundamental freedoms. Its Article 39 provides for the implementation of the ICCPR through Hong Kong law and prohibits restrictions on rights and freedoms in contravention of the ICCPR. At most, this means that at most the Bill of Rights is a harmless redundancy. But China retains the power to invalidate any laws that are inconsistent with its interpretation of the legitimate responsibilities of the central government or its relation to Hong Kong.

The requirement that the ICCPR remain in force raises the important question of whether Britain's reporting responsibilities to the Human Rights Committee will be assumed by China. China is not a signatory to the ICCPR, but as a signatory to the Joint Declaration it is bound to fulfil the requirements of the ICCPR "as applied to Hong Kong," including the filing of reports. The periodic reports before the Human Rights Committee are a public form of international scrutiny that can motivate governments to improve embarrassing practices. China so far has stated its opposition to reporting to the U.N., claiming that local legislation to protect human rights will be adequate. Britain, which is obliged to submit reports, has shown a poor example in this regard. At the time of its last report in 1991, the Human Rights Committee requested it submit another report on Hong Kong by August 1994 and "earlier if possible" in view of the importance of frequent reporting on Hong Kong in the run-up to 1997. Britain's report will be submitted shortly, but it has delayed the portion on Hong Kong until this October, virtually ensuring that this report will be the last it submits on the colony.

The Bill of Rights has already has produced some important court decisions on civil and political rights and has prompted the Hong Kong government to review colonial-era laws for inconsistency with its guarantees. But progress on both fronts has been slow. The British rule that losers pay all legal fees has inhibited private suits against the government except where criminal or commercial interests are at stake, and Legal Aid has taken up only a limited number of cases under the Bill of Rights. The Hong Kong government likewise has been laggard in revising ordinances with provisions that violate individual rights, particularly where police powers are concerned.

But the largest obstacle to the implementation of the Bill of Rights has been Governor Patten's refusal to entertain legislative proposals for a human rights commission. Such a commission would be able to provide an alternate forum to the courts for investigation of complaints, dispute resolution, public hearings and advice. It would also be a mechanism for issuing reports on the ICCPR, reviewing legislation for consistency with the Bill of Rights, and it would serve an educational function as well. China opposed legislative proposals for such a commission, threatening to dissolve it should it be formed before 1997.

This is not the only legislative initiative on rights that the Hong Kong government has

tried to squelch. Where a private member's bill has financial implications, it must be introduced to the legislature by the governor. Governor Patten has also refused to introduce legislators' bills on free access to public information and an equal opportunity commission. Instead, he has introduced substantially weaker measures to the legislature, such as a Code on Access to Information which provides no judicially enforceable remedies for the government's failure to disclose information, and an anti-discrimination bill that is limited to discrimination on the basis of sex and disability, ignoring other internationally-prohibited forms of discrimination such as race or political opinion.

The importance of firm measures to guarantee civil rights is illustrated by the quiet erosion of press freedom in Hong Kong. Self-censorship in the media is an increasingly serious problem, albeit one that is difficult to document. The most recent illustration is the *South China Morning Post's* abrupt cancellation on May 19, 1995 of a popular and politically controversial cartoon strip, "The World of Lily Wong." Although the paper claims its decision was based on financial considerations, it refused to run the balance of the month's installments for which it had paid. Recent strips lambasted China's practice of selling the organs of prisoners it executes. In one frame, a Chinese official assures a nervous observer that there will be no future shortage because "By then it'll be 1997 and we got all the democrats and over a dozen cartoonists!"

The threat to Hong Kong's press is not always so subtle. Xi Yang, a reporter for *Ming Pao*, still languishes in prison, sentenced in 1994 to a twelve-year prison term for "espionage regarding state secrets" -- in this case, a standard business scoop about the Bank of China's plans relating to interest rate movements and the sale of gold in the international market. China continues its policy of wooing journalists it considers friendly and excluding those it considers hostile--including denying visas to ten writers who had signed a letter of protest over Xi Yang's case. Beijing has also on two occasions denied visas without explanation to reporters who wished to cover Hong Kong issues in China from the new Hong Kong newspaper, *Apple Daily*. *Apple Daily* is owned by Jimmy Lai, whose magazine *Next* criticized Premier Li Peng.

Recommendations to the Congress:

In the United States-Hong Kong Policy Act of 1992, Congress unambiguously declared its wish to see full implementation of the provisions of the Joint Declaration. "The human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong. A fully successful transition in the exercise of sovereignty over Hong Kong must safeguard human rights in and of themselves. Human Rights also serve as a basis for Hong Kong's continued economic prosperity." The act mandates the U.S. play "an active role" in supporting Hong Kong, and part of that support must involve actively promoting the protection and furtherance of human rights, as in the following concrete measures.

1. The most tangible sign of concern and support for civil and political rights by the U.S. Congress is increased contact and exchanges with the people and leaders of Hong Kong. One

opportunity for doing so is the September 1995 Legislative Council elections. The precedent for a high-level international monitoring of Hong Kong elections should be established now, and Members of Congress and their staff should support such efforts through appropriate institutions. The U.S. government should not lend any support to China's efforts to ostracize or delegitimize duly appointed and elected government representatives in Hong Kong.

2. Congress should urge that China live up to its treaty obligations and assume the reporting requirement under the ICCPR, or empower the future Hong Kong government to assume that responsibility. Failure to do so should be considered a serious breach of the Joint Declaration.

3. Congress should strongly urge Governor Patten to support the establishment of a human rights commission that can ensure the Bill of Rights will be used to the greatest extent possible by the greatest number of people before 1997. Delay has already compromised the work such a commission could accomplish, but its creation will be an important measure to boost confidence in the territory's commitment to maintaining a high standard of civil and political rights. There is currently pending before the Legislative Council a government proposal to create an Equal Opportunity Commission that would deal with sex discrimination. Such a proposal could be expanded to cover all forms of discrimination and other basic violations of civil and political rights currently guaranteed by Hong Kong law. The Governor should be urged to adopt the most expeditious means of establishing an effective commission.

4. Governor Patten should be strongly urged to permit the introduction of private members' bills on subjects that directly affect human rights in Hong Kong post-1997, such as anti-discrimination legislation, access to public information and human rights commissions. Governor Patten should welcome these initiatives, and permit legislators to freely debate their own proposals as well as those of the government.

5. Congress should urge the Hong Kong government to swiftly act to amend, revise or repeal those laws that still present serious human rights problems under the Bill of Rights, such as the Official Secrets Act. Although Human Rights Watch/Asia welcomes the recent repeal of supporting legislation to the Emergency Regulations Ordinance, we regret that the government has not repealed the main provision granting the Governor (or future Chief Executive) the power to proclaim any law or regulation that he or she sees fit during an emergency.

"AMERICA'S LONG TERM INTEREST IN HONG KONG"

**REMARKS BY CONSUL GENERAL
RICHARD W. MUELLER
(AS PREPARED FOR DELIVERY)**

**FOREIGN CORRESPONDENTS' CLUB, HONG KONG
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I want to thank the Foreign Correspondents' Club for inviting me to be with you today. The FCC has long provided a forum for its members to hear speakers talk about issues of current interest. This is an important service to Hong Kong's journalists, and indeed to the community as a whole, and I hope my presentation today will be a useful contribution to your tradition.

Today, I want to talk with you about how the United States sees its current and future interests in Hong Kong. I will touch on our major areas of interest and try to give you a sense of what we think is going well, and of where we see possible problems for U.S. interests in the future. I'm talking here not just about the interests of the United States government, but of Hong Kong's resident American community.

I want to telegraph my final punch by telling you here at the beginning of my remarks what my overall conclusions are. Then, I will go back and fill in the reasons why I have reached those conclusions.

THE BOTTOM LINE

Hong Kong is today, as it has been for many years, a dynamic, stable, and prosperous city, one that is friendly to international business, to interaction with foreigners, and to American interests. Every day, I encourage American business people, scholars, and, yes, journalists, to come here to live, pursue their careers, and develop their enterprises.

I believe that the Joint Declaration and the Basic Law provide a comprehensive and rational framework for the transition of Hong Kong from British to Chinese sovereignty in 1997. If the principles embodied in those documents are faithfully implemented by the parties concerned, Hong Kong will continue to be one of the world's most prosperous and liveable centers for trade, finance, education and culture, tourism, and information exchange. In that event, Americans will certainly continue to come here to seek their livelihoods and their personal happiness. I am hopeful that that will indeed be Hong Kong's destiny.

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In order for this to happen, it is important that the conditions which helped to build Hong Kong -- and which have made it a haven for international business -- remain in place. Those conditions include, but are not limited to:

- the continuation of a high degree of autonomy, stability, and prosperity;
- the presence of a free market system, including the free flow of capital;
- a favorable attitude toward business: law taxes, a duty-free port, minimal regulation, and predictable enforcement of contracts;
- the rule of law, accompanied by the protection of civil liberties and human rights;
- the continued development of open, accountable and democratic institutions; and
- continued cooperation between Hong Kong and foreign law enforcement agencies.

This does not mean that Hong Kong must be preserved in amber after 1997, any more than it could have been preserved in amber in 1984 when the Sino-British Joint Declaration was signed. There will of course be evolution, some changes in how basic principles are implemented. There must be close cooperation between the people of Hong Kong and China over the coming years if the concept of one country, two systems is to be successfully implemented. At the same time, the fundamentals of the conditions I have just mentioned must remain if U.S. interests -- the ones on which it is especially appropriate for me to comment -- are not to be impaired.

The U.S. government is watching carefully developments on all these fronts. We recognize that the responsibility for their implementation and preservation lies with the present sovereign, the United Kingdom, and the future sovereign, the People's Republic of China. In making these remarks to you today, it is not my intention to instruct either London or Beijing on how the transition should be carried out. The blueprint for that is already embodied in the Joint Declaration and the Basic Law. Our intention is to cooperate with both sovereigns to do what we can to help Hong Kong maintain the conditions which have made it one of our best international friends and trading partners. In this connection, it is especially important for the transition to provide the sense and substance of continuity through 1997. Reducing uncertainty about the shape of future institutions and policies increases confidence on all sides.

Now let me turn to each of the U.S. interests I identified and say a little bit about what is hopeful and what is not so encouraging with regard to each of them.

HIGH DEGREE OF AUTONOMY, STABILITY AND PROSPERITY

The Joint Declaration stipulates that, after 1997, the Hong Kong Special Administrative Region (SAR) will have a high degree of autonomy except in matters relating to foreign affairs and defense. It further states that the social and economic systems, lifestyle, and rights and freedoms currently enjoyed by the Hong Kong people will remain unchanged for at least 50 years. The Basic Law, passed by the seventh National People's Congress in 1990, adds that China's socialist system and policies will not be extended to the territory. It reiterates the Joint Declaration promise to allow the SAR to exercise a high degree of autonomy and to enjoy executive, legislative, and independent judicial power.

The continuation of this promised high degree of autonomy is a key factor in the future of Hong Kong's international position, and in the future of U.S.-Hong Kong relations specifically. Let me be very clear. The U.S. will continue to support Hong Kong's participation in the World Trade Organization, APEC, and other such international institutions, as well as maintain bilateral agreements such as civil aviation and extradition, but in order to do so, Hong Kong after 1997 must be allowed to retain a genuine high degree of autonomy. Hong Kong's leaders and institutions must make their own decisions; this, after all, is a central thesis of the Basic Law.

The U.S. has been encouraged by the Joint Liaison Group's (JLG) action in extending 170 multilateral treaties currently applying to Hong Kong through the UK, and by its approval of Hong Kong's continuing to participate in 30 international organizations. The JLG has also made good progress on approvals for bilateral agreements between Hong Kong and other countries. The U.S. is currently negotiating or discussing with Hong Kong various agreements to replace those which are of interest to both sides, and of course, Hong Kong's high degree of autonomy is crucial for those agreements to remain valid after 1997. Among the most important, from the U.S. point of view, are a new extradition agreement, a mutual legal assistance agreement, and a new agreement on air services. In addition, the U.S. remains very interested in negotiating a full bilateral investment treaty with Hong Kong.

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We think it is very important that the agreement be fully consistent with the highest international standards in important areas such as international arbitration and the unconditioned right of establishment. At the very least, an agreement should lock in the continuation of the many very favorable aspects of Hong Kong's current investment regime; we would certainly hope that it would make further improvements. Unless such an agreement provides substantial and legally binding protections, it will not be possible to rally the necessary commercial and political support in the U.S. for this effort.

FREE MARKET SYSTEM AND FAVORABLE ATTITUDE TOWARD BUSINESS

The free market is one feature of Hong Kong life which everyone recognizes as distinctive. It has made many fortunes for those who have taken advantage of it. The system must be maintained and, if possible, enhanced for Hong Kong's continued prosperity.

Hong Kong has one of the most liberal trade and investment regimes in the world. There are virtually no government barriers to firms, foreign or domestic, wishing to establish businesses and to compete. Important components of this system in the public sector, have been the professionalism of the Hong Kong Civil Service (and I would note here the importance of maintaining the morale and efficiency of this fine institution), and an open process of awarding government contracts, with awards based not on favoritism but on getting the best product or service at the best price.

A strong, reliable system of commercial dispute resolution goes hand-in-hand with the free market system. Hong Kong is world-renowned for fairness and sound judgments in adjudicating contract disputes, whether in its courts or in its arbitration centers. This fact gives business confidence to invest large sums of money here. While I will go into this in more detail in a minute, let me say here that the adaptation of Hong Kong's laws and the creation of a complete court system in, in my view, crucial to maintaining Hong Kong's attractiveness to international entrepreneurs. If the rule of law is replaced by the rule of personal connections alone, then Hong Kong will quickly lose its luster and, I fear, its prosperity.

Of course, Hong Kong is not without its blemishes in the free enterprise arena. I continue to be concerned by the difficulties certain U.S. professionals -- physicians and attorneys, for example -- encounter if they want to practice in Hong Kong. Surely a way can be found to recognize their U.S. credentials and experience. In the commercial field, I have followed with interest the efforts of some to put in place anti-trust legislation, which would ensure fuller competition in all sectors of Hong Kong's economy.

With regard to competition for the many contracts associated with the new airport at Chek Lap Kok, according to Hong Kong government figures, U.S. companies to date have only been awarded two percent of the contract value associated with this project. U.S. companies provide world-class high technology and high-quality services in many airports around the world. The last chapter has not been written on this, however, and with several billions of dollars in franchises and contracts still to be awarded, we are hopeful that that share will increase. I truly believe the new airport would be a better facility for their participation.

LEGAL SYSTEM

The continuance of Hong Kong laws and the present legal system beyond 1997 will be a key factor in the territory's ability to maintain its promised high degree of autonomy. U.S. interests focus particularly on the rule of law and the protection of civil liberties. As I mentioned briefly a few moments ago, the rule of law is necessary in a world-class commercial center like Hong Kong. Its dilution would certainly drive away the very foreign investors whose business here is so important to Hong Kong and China. Business people must be able to rely on the courts' upholding the sanctity of contracts and on the impartial enforcement of commercial laws and regulations. In this connection, the establishment of a court of final appeal before 1997 would be a crucial step in maintaining confidence in Hong Kong's ability to operate an effective legal system after the transition and to avoid damaging legal gaps. We strongly hope that China and Britain can agree to establish the court soon.

Beyond that, people in general -- not just business people -- must feel secure about the protection of their basic rights. People who look over their shoulder for fear of arbitrary arrest or detention, or who fear they cannot get a fair trial in the event they are charged with an offense, are not the kind of people who built Hong Kong. It is reassuring to remember that the Joint Declaration and the Basic Law make clear that Hong Kong's system of legal protection of civil liberties and common law traditions are to continue after the transition.

I want to note that our concern with civil and human rights is a universal concern. It is a global aspect of our foreign policy. If we pay close attention to the protection of civil liberties here, it is the same close attention which we focus on other areas around the world, and, indeed, on our own domestic situation. Human rights is an integral part of our policy as a matter of principle, and because we believe it affects so many aspects of relations between states -- economic, political, and cultural.

DEMOCRATIC INSTITUTIONS

When U.S. government officials speak about the virtues of open, accountable, and democratic institutions, we are sometimes criticized for trying to impose American values on people from other cultural backgrounds. I reject that criticism. Democracy is not uniquely American. The idea is rooted in ancient Greece, as I recall, and has evolved in various forms around the world ever since. It is far from unknown in Asia: witness Japan, South Korea, Taiwan, Malaysia, the Philippines, Mongolia, Thailand, and others.

We believe strongly that the most stable and prosperous societies over the long run are ones which are responsive to their citizens' needs and interests and which hold their governmental institutions and leaders accountable for their actions. The form of government we have in the U.S. is by no means the only model for a democratic government. And we readily admit we have our shortcomings also. But whatever model one chooses, the value of a democratic system lies in making government accountable to the people. If the people are dissatisfied with corruption, with spending priorities, or with inefficiencies, they are empowered to make their views known and, when necessary, choose new leaders. Over time, that promotes more honest, effective, and stable government, and that is why the U.S. favors the development of more open, democratic institutions in Hong Kong, giving Hong Kong's highly educated and informed residents some say in decisions which affect their lives and families. It is why we expressed regret last year at China's announced intention to abolish the elected Legislative Council in 1997.

The process of building more democratic institutions can be a lengthy one -- it does not take place overnight. While we could all wish that this process might have started earlier in Hong Kong, it is now important that the momentum which is already underway be continued toward the goal set forth in the Joint Declaration and the Basic Law, which is that the Chief Executive of the SAR, and its Legislative Council, should eventually be selected by universal suffrage.

Concomitant with a democratic system is a guarantee of freedom of expression, including freedom of the press. If you will permit me for a moment to preach to the converted, let me say that a free press is especially important to Hong Kong, which relies to such a great degree on the free flow of information and ideas. There is a direct link between such a flow and the smooth and rational operation of a great international trading and financial center like Hong Kong. You here, and your colleagues in the Chinese-language and English-language electronic and print media, are to be commended and encouraged for the role you have played in building Hong Kong.

I think all of us in this room sense a widespread unease among Hong Kong reporters and correspondents as well as some editors and publishers about the future press environment for a robust and dynamic media. Just as the U.S. supports the continuation of Hong Kong's free market in goods and services, we also support, and will continue to support strongly, a free market in information for Hong Kong reporters, editors and publishers, as we do for the media all around the world.

LAW ENFORCEMENT COOPERATION

This brings me to the last U.S. interest I mentioned, the importance of continuing law enforcement cooperation between Hong Kong and the U.S. This has been one of the most satisfactory aspects of our bilateral relationship with Hong Kong, one which has been of tremendous benefit to both sides. Areas of criminal activity which Hong Kong and U.S. law enforcement officers are effectively fighting together include drug trafficking and associated money laundering, transshipment of pirated software and other intellectual property, organized crime, credit card fraud, counterfeiting of U.S. currency, and the smuggling of illegal aliens.

Signs are good that this close cooperation will continue after 1997. As I alluded to earlier, the U.S. and Hong Kong have initialled a new extradition agreement which would apply to the SAR after 1997. This agreement awaits approval by the Joint Liaison Group, after which it will be submitted to the U.S. Senate for ratification. Last month, the JLG also approved the U.S. as a negotiating partner with Hong Kong on a bilateral legal assistance agreement, which we hope to conclude before 1997.

I believe China understands the importance of our law enforcement cooperation. Indeed, in recent years U.S.-PRC law enforcement cooperation to combat precisely the problems I have mentioned has made major strides. U.S. law enforcement agency representatives have formed closer professional and personal ties with their Chinese counterparts. I am convinced that the Chinese government will want this kind of cooperation to continue with regard to Hong Kong after 1997, because it is in China's interest.

OUR HISTORY IN HONG KONG

I have covered the major issues surrounding the 1997 transition in which the U.S. has a particular interest. In closing, I want to put all this in a historical context.

U.S. interest in Hong Kong is not something new, something that we just discovered in the last decade. We can go back to the late 1830'S, when the largest of the American trading companies in these seas, I am proud to say, pulled out of the opium trade. Today's Hong Kong American community of over 31,000 traces its roots back to about 20 missionaries and merchants who had gathered here by the early 1850's. The American Chamber of Commerce's earliest predecessor might be that lone American in the 1880'S who -- according to Frank Welsh in his history, "A Borrowed Place" -- sat on the Chamber of Commerce here alongside 20 Britons, six other Europeans, three Jews of undetermined nationality, two Chinese, and a Parsee.

Today, Hong Kong has become our 13th largest trading partner -- 7th if one looks only at agricultural trade. In 1994, our two-way merchandise trade surpassed 21 billion U.S. dollars, with U.S. exports over 11 billion dollars and U.S. imports of Hong Kong goods, excluding re-exports of PRC-made goods, at 9 billion U.S. dollars. There are about 1,000 American companies here, including about 370 regional headquarters. U.S. investors have bids in on many of Hong Kong's amazing new infrastructure projects. At the end of 1993, U.S. direct investment in Hong Kong on a historical cost basis was 10.5 billion U.S. dollars, concentrated in wholesale trade, banking and finance, and manufacturing. Of course, those investments which have been here longer have been growing right along with the Hong Kong economy. So the value of total U.S. investment in today's dollars, although an exact amount cannot be known for sure, is clearly substantially higher than the book value I mentioned earlier.

Our children attend school in Hong Kong, and many of us teach in the territory's schools and universities. On weekends, we join other Hong Kong residents in hiking the MacLehose trail and renewing our spirits by viewing the beauty of the New Territories' mountains. We compete every year in the dragon boat races -- usually with little success, but we do compete.

Approximately 14,000 Hong Kong students currently study in the U.S., and the territory abounds with alumni groups for American schools and universities of all sizes and from all regions. Alumni of American universities here in Hong Kong number in the tens of thousands. Every summer, and every Chinese New Year, the line for tourist visas outside our Consulate General swells with Hong Kong people who want to cross the Pacific to see their friends and relatives who live permanently in the United States.

The ties between Hong Kong and the U.S. are not only those of money, or of successful business. They are human ties, ties of culture, ties of education, ties of blood. The U.S. always has been a player in the pageant of Hong Kong's history, and I confidently predict that we always will be.



美國香港華人聯會

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**THE UNITED STATES MUST TAKE A STRONGER STANCE
ON THE QUESTION OF DEMOCRACY IN HONG KONG**

TESTIMONY OF

THE ALLIANCE OF HONG KONG CHINESE IN THE UNITED STATES

TO THE HOUSE OF REPRESENTATIVES INTERNATIONAL RELATIONS COMMITTEE,

ASIA AND PACIFIC SUB-COMMITTEE

The Alliance of Hong Kong Chinese in the United States (AHKCUS) is a national alliance of Chinese Americans and Hong Kong professionals and students who are members of more than ten groups spread out across the United States. We are very concerned with the political developments in Hong Kong leading up to the 1997 hand-over of Hong Kong to the People's Republic of China (PRC) and the current US policy towards Hong Kong. We are particularly concerned that the PRC Government is directly breaching its treaty commitments under the 1984 Sino-British Joint Declaration and that the United States Government appears unwilling to address these breaches. Although we found parts of the recent State Department Report issued pursuant to the US-Hong Kong Policy Act to be generally accurate and thoughtful, we are distressed that the report appears to whitewash sensitive topics by failing to address several of the most significant issues facing Hong Kong. These issues are discussed below.



1. The Provisions of the Hong Kong Basic Law Violate in Letter and in Spirit the 1984 Sino-British Joint Declaration

In the 1984 Joint Declaration, which was registered by Britain and China at the United Nations as an international treaty, China promised that after 1997 Hong Kong would be allowed to govern itself in all matters except for defense and foreign affairs. The heart of the Joint Declaration was its promise that Hong Kong would enjoy a "high degree of autonomy" in the form of "one country, two systems" and that Hong Kong people would be allowed to elect their own government and enjoy full protection of human rights. The twin promises of a "high degree of autonomy" and "one country, two systems" are inseparable. Without a true democratic system of government, Hong Kong will never have genuine autonomy and China's promise of "one country, two systems" will be an empty one.

The emptiness of China's promises is visible in the Basic Law, which will serve as the territory's post-1997 constitution. Rather than allowing the people of Hong Kong to draft their own constitution freely, the PRC Government manipulated the composition of the Basic Law Drafting Committee in such a way that true democratic voices in Hong Kong would be snubbed out effectively. The resultant 1990 Hong Kong Basic Law serves not the people of Hong Kong but the authoritarian PRC Government as a convenient instrument of repression. For example, in one of the provisions of the Basic Law, it is stipulated that the future Hong Kong Court of Final Appeal does not have the power of final interpretation over the Basic Law; this power rests in Beijing with the Standing Committee of the National People's Congress.

Like the people of Hong Kong, we deeply regret that the Basic Law does not accord in letter nor in spirit with the Joint Declaration's clear provisions guaranteeing autonomy for Hong Kong.



Many international observers, such as the International Commission of Jurists, have done studies demonstrating the degree to which the Basic Law violates the Joint Declaration. In addition, the Hong Kong Legislative Council (Legco) voted overwhelmingly in 1990 when the Basic Law was promulgated to call on China to amend virtually every provision in the Basic Law dealing with Hong Kong's political system.

Given the strong criticism in Hong Kong and among international experts of the Basic Law, it is very disappointing to see the State Department's contention in its recent report that the Basic Law is "consistent with PRC commitments in the Joint Declaration." The State Department does not state how it reaches this conclusion, so the question must arise: how can the State Department reach a conclusion that is so at odds with the conclusions of the Hong Kong Bar Association, the Hong Kong Legislative Council, and the International Commission of Jurists?

It appears, we are afraid, that the State Department is pulling its punches out of fear of a bad reaction from China. Such an unwillingness on the part of the State Department to address what is perhaps the most important issue facing Hong Kong -- China's refusal to honor the core provisions of the Joint Declaration -- is extremely disheartening. It does not serve the interests of the United States, of Hong Kong, or of China for the State Department to take such a weak and insupportable position.

2. The Absence of a True Democratic System of Government in Hong Kong

We are also very concerned with Britain and China's refusal to allow for democracy in Hong Kong. (Please refer to Annex 1 for a brief survey of the system of government in Hong Kong.) On



the surface, Hong Kong can be considered as a free society, but it does not have a democratic government. Currently, the executive officer of the Hong Kong Government, the Governor, is appointed by the British Government and the freedom and the rule of law enjoyed by the people of Hong Kong is an indirect consequence of the British democratic system: the performance of the Governor is monitored by the British Parliament.

After 1997, the Governor (re-named the Chief Executive) will be "elected" by a Beijing-controlled Election Committee and then "approved" by the PRC Government. The people of Hong Kong do not have the opportunity to elect their Chief Executive in a democratic election. The problem with this is all too obvious: the new master of Hong Kong will not be accountable to the people of Hong Kong and is likely to be controlled by Beijing. The Joint Declaration promised that the Executive Branch headed by the Chief Executive would be accountable to an elected Legislature, but the Basic Law does not provide for such accountability.

It should be emphasized here that not all the seats in the Legislature are directly elected. Out of the 60 seats in the Legislature, 40 of them will be "elected" indirectly through Election Committees and Functional Constituencies (professional and occupational groups). This kind of indirect election is particularly vulnerable to electoral manipulation and fraud, which appeal to the PRC Government. Needless to say, these Beijing-controlled groups and committees, and those legislative councilors thus "elected," are not likely to represent the people of Hong Kong. This facade of democracy is insulting to the intelligence of the people of Hong Kong.

According to the Basic Law, 20 out of 60 seats in the Legislature will be directly elected by the people of Hong Kong. It is not hard to appreciate that the directly elected representatives will be outnumbered by those under Beijing's control. To add further insult to injury, Beijing has also



stated that it will not permit true democratic elections even for the 20 directly elected seats -- even these seats will be filled by a yet to be determined form of "proportional representation." The promises of "a high degree of autonomy" with "Hong Kong people rule Hong Kong" and "one country, two systems" sound rather hollow in light of such political arrangements.

3. **Threat by the Chinese Government to Dismantle What Little Democracy that Has Been Established in Hong Kong**

The PRC Government, in attempt to get revenge against British Governor Chris Patten and the very limited democratic reforms he has made, has said it will disband the Legislature in 1997 and throw all of its members out (even though recent polls taken in Hong Kong show an overwhelming majority of the people oppose to the disbanding of the Legislature after July 1, 1997). Then, Beijing will appoint a "provisional Legislature" for an indefinite time period. It should be stated clearly that this appointed "provisional Legislature" violates the 1984 Sino-British Joint Declaration, which states that the Hong Kong Legislature must be constituted through elections.

The people of Hong Kong should have no illusion of what is in store for them after the establishment of this "provisional Legislature." This "provisional Legislature" will have the job of amending any laws Beijing does not like and drafting new election laws. Furthermore, this "provisional Legislature" will have the responsibility to "approve" all the candidates chosen by the Beijing-controlled Chief Executive to sit on the Court of Final Appeal, greatly undermining this safeguard of the independence of the judiciary system in Hong Kong.

Furthermore, Beijing has already stated that the appointed "provisional Legislature" will repeal Hong Kong's Bill of Rights. Thus, before the end of the first year of PRC rule, the PRC



Government will have gutted many of Hong Kong's most important laws and institutions guaranteeing personal freedoms and the most basic rights of the people.

In fact, as a consequence of the recent Sino-British agreement on the Hong Kong Court of Final Appeal and the subsequent passing of the Hong Kong Court of Final Appeal (CFA) Bill tabled by Governor Patten, the dismantling of the limited democratic system in Hong Kong has already started. It is, nonetheless, lamentable that the Bill was passed over the objection by over three quarters of Legco's democratically elected legislators. In the 1984 Sino-British Joint Declaration on Hong Kong, China promised after July 1, 1997 that Hong Kong would have an independent Court of Final Appeal that would exercise the power of final adjudication over Hong Kong's common law. The CFA Bill, however, creates a Court that is not independent, has limited jurisdiction over political matters, and will not have the power of final adjudication. There are four areas of particularly grave concern and they are listed as follow:

- A. Independence: The CFA agreement strips Hong Kong's elected legislators of the power to confirm the Court of Final Appeal judges, a critical guarantee of the Court's independence provided for in the Joint Declaration.
- B. Foreign Judges: The CFA Bill strips from the Court of Final Appeal the power to invite more than one foreign common law judge to sit on the Court, in direct breach of the Joint Declaration.
- C. Jurisdiction: According to the CFA Bill, the Court of Final Appeal will have no jurisdiction over any "Act of State." The Chinese definition of "Act of State" is very different from the traditional common law definition, which includes only an act of a sovereign state vis-a-vis another sovereign state such as a declaration of war. The



PRC Government has said it will use this "Act of State" loophole, which Beijing and not the Hong Kong Court will define, to prohibit the Court from exercising jurisdiction over sensitive political matters.

- D. Finality: According to the Hong Kong Basic Law, the Standing Committee of the National People's Congress, a rubber-stamp organization under the Chinese Communist Party, will have the final interpretation of Hong Kong's constitution. In this way, the Court of Final Appeal is really the Court of not so Final Appeal, and Beijing will, in fact, preserve an all-too-effective "post-verdict remedial mechanism."

4. The Public Sentiments in Hong Kong

The best poll of public opinion in Hong Kong has been taken at the ballot box. Many in Hong Kong may have been sufficiently intimidated by the PRC Government to refrain from open criticism of the policy of the PRC Government on Hong Kong, but they can still register their defiance safely in the ballot booth. This is exactly what has happened. In the first ever direct election in Hong Kong in 1991, candidates who ran on platforms of democratic reform swept 17 out of 18 seats in the Legislature. Also, in the 1995 Urban and Regional Council elections, pro-democracy candidates again swept the majority of the seats. Recent polls taken in Hong Kong again predict a large victory for pro-democracy candidates in the Legislative Council election in this September, the last election before the hand-over to China.

In numerous public opinion polls taken in Hong Kong in the past few years, moreover, the majority of Hong Kong people have consistently indicated their aspiration for freedom and democracy, and their lack of confidence in the future of post-1997 Hong Kong. A better way of



polling the level of confidence, or rather the lack of it, of the people of Hong Kong in their future is the observation of the steady stream of emigration overseas. In spite of the restrictive immigration laws imposed by many free countries, there are 60,000 people emigrating overseas annually.

After the 1995 election of the Urban and Regional Councils in Hong Kong, over 70% of the populace objected to the disbanding of the District Boards, Municipal Councils, and Legislative Council, as threatened by the PRC Government. Also, a poll taken at the time showed that 75% of the people did not have confidence or had a low level of confidence in the "Preliminary Working Committee", a Beijing-controlled committee that is charged to prepare for the 1997 transition. Of course, the real voice of the people can be easily drowned out by a few vocal pro-Beijing business interests with their overwhelming financial resources. The people of Hong Kong have been painted with such labels as being "political apathetic" or "satisfied with the political arrangements of the PRC Government" through the propaganda machinery of the pro-Beijing media. Contrary to the pro-Beijing propaganda, given the opportunity, the people of Hong Kong have spoken out loud and clear to the world through the ballot box. We are distressed that such important indications of public opinion are omitted in the State Department's report.

5. The "United Front" Tactics Employed by the Chinese Government to Undermine the Democratic Aspirations of the Hong Kong People

A further area of grave concern to us is Beijing's United Front campaign against Hong Kong's directly elected representatives, a campaign that the State Department chooses to ignore in its report. In Hong Kong's first democratic elections to the Legislative Council in 1991, pro-democracy candidates (who ran on platforms calling on Beijing to amend the Basic Law) swept 17 of the 18



seats. Of these 17 pro-democracy Legco members, 14 belong to Hong Kong's biggest political party, the Democratic Party. Beijing has said that leading democrats will not be allowed to participate in post-1997 elections, and Beijing refused to appoint a single directly elected Legco member to its pre-1997 transition body, the "Preliminary Working Committee." At this point, Beijing appears determined to persist in its policy of no dialogue with Hong Kong's democrats, who polls show are likely to win a large majority of the 20 Legco seats open to democratic election this September. It is regrettable, however, that the State Department makes no mention whatsoever of the PRC's refusal to have any dialogue with Hong Kong's largest political party.

A further target of the United Front campaign has been Hong Kong's heretofore free media. Last year, Xi Yang, a reporter for the daily newspaper *Ming Pao* in Hong Kong, was sentenced to a 12-year term after a secret trial in Beijing on the trumped-up charge of stealing state secrets. The prosecution of Xi Yang was a frightening attempt to intimidate the media of Hong Kong and it sent a chill down the spine of independent-minded reporters. Other more subtle steps have included an advertising boycott of newspapers in Hong Kong that Beijing deems unfriendly in an effort to cause them to go bankrupt and a successful attempt to exert pressure on the local television stations not to broadcast programs that the PRC Government views as critical of its policies.

CONCLUSION: A Window of Opportunity

Before the limited democratic system in Hong Kong is dismantled, we urge the US Congress to take full advantage of the window of opportunity in these two years before the hand-over to support the establishment of democratic institutions in Hong Kong. In particular, the United States



should recognize the winners of the democratic elections this September as the true representatives of the people of Hong Kong.

In the face of China's refusal to honor its treaty commitments and its plans to impose its own authoritarian rule on Hong Kong, the United States Government needs to take a much stronger stance than its current position. The United States does not do China any favors by whitewashing the most controversial issues out of its Hong Kong report; the message to China in the report, sadly, is: continue to do what you have been doing. What the United States should be doing is taking a tougher stance in favor of democracy in Hong Kong by insisting that the PRC Government adheres faithfully to their promises in the Sino-British Joint Declaration. By the guarantee of a free and democratic society in Hong Kong, the United States will not only benefit from a favorable business climate and political stability in the region but also from the model of democratic, fair society that Hong Kong could provide to all of China.

AHKCUS

LIBERTY WATCH



Issue 1: Democracy in Chains

March 1995

Background

In 1984, the British and the mainland Chinese signed the Sino-British Joint Declaration on Hong Kong. The agreement stipulates that the mainland shall resume sovereignty over Hong Kong on July 1, 1997 under the "one country two systems" arrangement whereby Hong Kong shall keep its social and economic system unchanged for 50 years. Except for diplomatic and defense matters, Hong Kong is to enjoy a high degree of autonomy, with its own powers to govern, to legislate and to establish an independent judiciary. Its legislature shall be elected and the executive shall be accountable to the legislature.

While this democratic sounding framework under which Hong Kong is to become a self-governed Special Administrative Region of the mainland was welcomed by the people of Hong Kong, subsequent developments have caused serious concerns about whether the agreement will be kept. Being an organization concerned about human rights and democracy in Hong Kong, AHKCUS would very much like to see the autonomy and democracy promised in the Joint Declaration realized in post-1997 Hong Kong.

Below we briefly describe the development of the territory's Legislative Council (Legco). It is our hope that this would facilitate understanding of and arouse attention to the political situation in Hong Kong.

From Appointments to Elections

Legco was composed entirely of appointed members from its inception in 1843 until 1991. Initially, only government officials were appointed. Appointments soon extended to private citizens though they remained a minority. Chinese were first appointed in 1884 but they were kept an even smaller minority. While Legco was gradually given more influence, ultimate control remained firmly in the governor's hands. Soon after World War II ended, a proposal was actually made by then governor Mark Young to introduce popular elections. Lacking public awareness and input, the proposal was blocked by established interests.

In 1984, the Sino-British Joint Declaration on Hong Kong was signed for Hong Kong to return to the mainland on July 1, 1997. It promises democracy, a high degree of autonomy, and for Hong Kong to remain unchanged for 50 years. Despite a long-held distrust of the mainland regime and concerns about vagueness in the Joint Declaration, the Hong Kong populace seemed largely satisfied. For many, it was a long awaited reunion with a motherland that looked to be heading in the right direction. Economic liberalization was then in full bloom on the mainland and much social liberalization was also occurring.

The Tiananmen Massacre in June 1989 served as a chilling reality check for the Hong Kong populace. "Brain drain" picked up in full force with upwards of 60,000 people emigrating annually. For those unable or unwilling to emigrate, a democracy that can safeguard human rights became an urgent concern. The push for democratic reforms became a force to be reckoned with overnight.

Electoral reforms were passed in March 1990 to give Legco its first direct election in 1991. Eighteen out of a total of 60 seats were to be directly elected. Twenty-one seats were to be elected through functional constituency, by professional and occupational groups. The remaining 21 were to be appointed by the governor.

The Basic Law and the "Through Train"

In April 1990, the Basic Law, which was to be the Constitution of Hong Kong after 1997, was promulgated. While it states that the ultimate goal is to have all Legco members elected, the progression specified left much to be desired. There are to be 20 directly elected seats in the 1997 Legco, 24 in 1999, and for the 2003 Legco, 30 seats are to be directly elected with the other 30 through functional constituency. For the 2007 Legco, changes in composition would require a two thirds majority in the Legco, and agreed to by the chief executive.

Two major views evolved over the pace of electoral reforms. One was the "through train" view where the emphasis was conformity with the mainland's wishes so that the last Legco under British rule could carry over to after 1997. This means electoral arrangements for the 1995 Legco would need the mainland's blessings. The Liberal Party, generally regarded as representing the business community in the territory and desiring political stability, held this view.

The other view was that the Basic Law does not take into account the realities of Hong Kong and should be amended to introduce democracy more speedily. This view was held by pro-democracy groups in the territory, notably the United Democrats, despite pronouncements

by the mainland that the Basic Law would not be amended prior to 1997. More democracy for the 1995 Legco than the mainland's interpretation of what the Basic Law prescribes for the 1997 Legco would therefore run the risk of "derailing the through train."

Sino-British relationship over Hong Kong since the signing of the Joint Declaration had been one where the British would typically yield to the mainland. The "through train" view was therefore the order of the day. The tide would however soon turn.

The First Direct Elections and the Appointment of Patten

At the end of a heated race for the 18 directly elected seats of the 1991 Legco, 14 seats were won by pro-democracy candidates and the election was deemed a total victory for the pro-democracy camp. This showed that there was a strong yearning for democracy despite a relative lack of aggressive demand from the populace. Faster electoral reforms were in order.

At the same time, Sino-British relationship over Hong Kong had become exceedingly difficult for the British under a policy of appeasement. It was then decided that for the British to retreat honorably from Hong Kong, she would help push for a faster pace of electoral reform in the territory. Chris Patten was appointed the last governor of Hong Kong.

Patten's Political Reform Proposal

Soon after taking his job in 1992, Patten proposed electoral reforms that took advantage of the grey areas of the Basic Law to effectively double the number of popularly elected seats in the 1995 Legco, while basically following the framework of the Basic Law for the 1997 Legco. The 1995 Legco elected under his proposal would therefore be more democratic than the mainland intended, but should still be able to "ride the through train."

It is specified in the Basic Law that for the 1997 Legco, 20 seats would be popularly elected, 10 seats would be elected by election committees, and 30 seats would be elected through functional constituency. However, the process of forming election committees and the definition of functional constituency groups were not specified. It was to be proposed by the government of Hong Kong and passed by Legco.

Under Patten's proposal, members of election committees would be popularly elected and the additional nine functional constituency groups would include all workers. This is in contrast to an election committee intended by the mainland to be largely appointed and representative of relatively small functional constituency groups. Patten's

scheme would effectively give 39 popularly elected seats for the 1995 Legco versus the 20 that the mainland had intended for the 1997 Legco.

His scheme to give more democracy while following the framework of the Basic Law received immediate popular support. It would create much needed room for the pro-democracy camp to maneuver in its attempt to introduce democracy more speedily.

The mainland was outraged and pronounced that any electoral arrangement without its agreement will be dismantled in 1997. It maintained that Patten's proposal constituted three violations: that of the Joint Declaration, the Basic Law, and the understanding achieved through their foreign offices. However, it never showed specifically which provisions were violated.

The Territory Held Hostage

Sensing that public sentiments were on the side of Patten and the pro-democracy camp, the mainland took on several courses of action.

It turned the issue of whether Hong Kong wants more democracy into a pro-British versus pro-China issue to turn the people against Patten and the pro-democracy camp. It established a Preliminary Working Committee to lay the ground work for the Preparatory Committee, to be established in 1996 to make arrangements for the transfer of sovereignty. This was however generally taken to be a "second stove" to undercut Patten's authority.

To further undercut Patten and the British, it stopped cooperating on matters concerning the territory. As a result, bilateral matters pertaining to the transfer of sovereignty, and social and economic developments straddling 1997 were put on hold. In addition, threats were made to British economic interests.

While these tactics dampened support for Patten's proposal, they did not bring Patten to his knees. It became a test of will between Patten and the mainland with Hong Kong the sure loser. The mainland, initially refusing resolutely to discuss terms of the political reform proposal all together, reluctantly agreed to begin negotiations in April 1993.

It was apparent to many at the outset that the mainland had no intention to come to terms short of an entire revamp of Patten's proposal. Negotiations thus dragged on until early 1994. Claiming logistical necessity, the Patten government then introduced a less controversial portion of a compromised version of Patten's original proposal to Legco for deliberation. The mainland expressed outrage, claimed that such an action amounted to breaking off negotiations, proclaimed the negotiations



over, pronounced that any electoral arrangement without its agreement will be dismantled in 1997, and resorted back to its uncooperative ways.

The Ending of the Political Row

Two other notable proposals emerged during this period. One was put forth by the Liberal Party which toed the line the mainland intended. Their aim was a 1995 Legco that can ride the "through train" though they failed to obtain mainland endorsement. The other was put forth by Emily Lau, an Independent member of Legco. Her proposal called for all 60 seats in the 1995 Legco to be directly elected.

Towards the middle of 1994, reform for the 1995 elections were set to be passed by Legco without explicit mainland agreement. Matters concerning the territory requiring the cooperation of the two sides were becoming more urgent by the day. Both sides soften their rhetoric and the mainland began to cooperate again. Post-1997 military arrangements were the first issue resolved. Agreement was reached on the issue the day after Legco's decision on reform for the 1995 elections.

On June 29, 1994, Patten's reform proposal was passed. The other two proposals was each defeated by one vote. As expected, the mainland reiterated that all arrangements resulting from the proposal will be dismantled on July 1, 1997.

Outlook

A sometimes overlooked effect of Patten's role in the democratization of Hong Kong, whether intended or not, is the increased role of Legco in the politics of the territory which has forever been executive-led. With directly elected Legco members, this has also meant increased public interest and participation. Such experiences are invaluable to the territory towards becoming increasingly mature in the workings of democracy.

As Hong Kong returns to China, it is important for Hong Kong to have a properly functioning democracy. It would be the best guarantee for it to attain autonomy, to continue its way of life undisturbed, and to maintain its position as a major free trading partner of the international community. With China's repeated threats to dismantle Legco in 1997, the future of democracy in Hong Kong remains uncertain. Perhaps expressions of greater international concern and outcry would help the people of Hong Kong in their struggle for democracy.

About AHKCUS

The Alliance of Hong Kong Chinese in the United States (AHKCUS) was formed in the aftermath of the June 4th Massacre by a group of Hong Kong Chinese concerned about democracy and human rights in China and Hong Kong. Inaugurated in Chicago in February of 1990 by organizations and individuals all over the United States, we are an incorporated, tax-deductable, non-profit organization with members in the United States and from other parts of the world.

The stated objectives of AHKCUS are:

- a. To promote democratic development in China and Hong Kong;
- b. To promote human rights in China and Hong Kong;
- c. To raise international concern for the future of Hong Kong;
- d. To protect the interests and rights of Chinese in the United States;

Some of the past and current projects organized by AHKCUS are:

Protests against passage of the Hong Kong Basic Law (2/90)
 Democracy for China concert tour (6/90)
 Tiananmen Memorial Art Exhibition tour (6/90-11/91)
 Nationwide voters registration campaigns (91, 95)
 History of Chinese Democracy Movement photo exhibition tour (91)
 Remember our Hong Kong Root project:
 San Francisco concert (9/91)
 Election promotion trip to Hong Kong (9/91)
 Protest against Chinese Premier Li Peng's visit to the UN:
 Half page advertisement in the New York Times (1/92)
 Organize mass rally in New York (1/92)
 Testify in Congress:
 On the US-Hong Kong Policy Act 1991
 On the Radio Free China Act
 Other human rights related issues
 Attend trials and hearings of pre-democracy dissidents
 Lobby the United Nations Human Rights Commission
 June 4th memorial activities
 Numerous letter writing campaigns
 Publish AHKCUS Quarterly and AHKCUS Liberty Watch
 Maintain a computer for distribution of news and information
 Organize the Remember our Hong Kong Root II project

About AHKCUS Liberty Watch

These are informational brochures published by AHKCUS in addition to the AHKCUS Quarterly. Each issue deals with a specific issue facing China or Hong Kong.



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